

Dameon Ray Franklin T-29665  
Kern Valley State Prison  
PO Box 5103 C4-107  
Delano, CA 93216

*Joseph*  
**FILED**  
AUG 11 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
*[Signature]*

E-filing

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**WHA**  
**(PR)**

IN re:

DAMEON RAY FRANKLIN

ON

HABEAS CORPUS

**CV 08**

**3811**

PETITION FOR WRIT OF  
HABEAS CORPUS 28 U.S.C. §2254

*608-3511 WHA (PR)*

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example, Alameda County Superior Court, Oakland):

Alameda County Superior Court  
Oakland, CA 94612

1225 Fallon St.  
Location

(b) Case number, if known 136007B

(c) Date and terms of sentence 18 Years 9/7/01

(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes XXX No    

Where? Kern Valley State Prison PO Box 5103 C4-107 Delano, CA 93216  
(Name of Institution) (Address)

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

S261(A)(2); 264.1, 288(A)(D)

3. Did you have any of the following?

Arraignment: Yes XX No     Preliminary Hearing: Yes XX No     Motion to Suppress: Yes     No

4. How did you plead?

Guilty \_\_\_\_\_ Not Guilty **XX** \_\_\_\_\_ Nolo Contendere \_\_\_\_\_

Any other plea (specify) \_\_\_\_\_

5. If you went to trial, what kind of trial did you have?

Jury **XX** \_\_\_\_\_ Judge alone \_\_\_\_\_ Judge alone on a transcript \_\_\_\_\_

6. Did you testify at your trial? Yes \_\_\_ No **XX** \_\_\_\_\_

7. Did you have an attorney at the following proceedings:

- (a) Arraignment Yes **XX** \_\_\_\_\_ No \_\_\_  
 (b) Preliminary hearing Yes **XX** \_\_\_\_\_ No \_\_\_  
 (c) Time of plea Yes \_\_\_ No \_\_\_  
 (d) Trial Yes **XX** \_\_\_\_\_ No \_\_\_  
 (e) Sentencing Yes \_\_\_ No \_\_\_  
 (f) Appeal Yes **XX** \_\_\_\_\_ No \_\_\_  
 (g) Other post-conviction proceeding Yes \_\_\_ No **XX** \_\_\_\_\_

8. Did you appeal your conviction? Yes **XX** \_\_\_\_\_ No \_\_\_

(a) If you did, to what court(s) did you appeal?

Court of Appeal	Yes <b>XX</b> _____	No ___	<u>2002</u>	<u>Affirmed</u>
			(Year)	(Result)
Supreme Court of California	Yes <b>XX</b> _____	No ___	<u>2003</u>	<u></u>
			(Year)	(Result)
Any other court	Yes ___	No ___	<u></u>	<u></u>
			(Year)	(Result)

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes \_\_\_ No **XX** \_\_\_\_\_

(c) Was there an opinion? Yes \_\_\_ No **XX** \_\_\_\_\_

(d) Did you seek permission to file a late appeal under Rule 31(a)?  
 Yes \_\_\_ No \_\_\_

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes **xx** No   

**Petition For Writ of Habeas Corpus (Alameda County Superior Court)**  
**[Petition submitted March 1, 2007]**

**Order Denying Petition For Writ of Habeas Corpus (Alameda County Superior Court, April 30, 2007)**

**Petition For Writ of Habeas Corpus in the California Supreme Court**  
**[Petition submitted September 28, 2007]**

**Order Denying Petition For Writ of Habeas Corpus March 19, 2008**

Please be apprised habeas corpus petition submitted were the results of the United States Supreme Court decision of CUNNINGHAM v. CALIFORNIA, (Decided January 22, 2007, No. 05-6551; WL 135687.

It is apparent the above case is on point with issues raised in petitioner's habeas corpus. However, it is also apparent due to issues which were "not" addressed nor made clear in the court's decision, state courts refused to address the same, advising petition the federal courts made this mess and thus federal courts should "clean up" their own mess. The above case has far reaching affects. A clear and definitive decision as to retroactive affects of the **CUNNINGHAM** decision is imperative.

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court Alameda County Superior Court

Type of Proceeding Petition For Writ of Habeas Corpus

Grounds raised (Be brief but specific):

- a. Trial court erroneously selected the Upper Term and Full Term Consecutive Sentence as to Count 2
- b. Petitioner object to the sentencing court's reliance on facts not found by a jury to impose the upper term
- c. Appellate counsel was grossly ineffective by counsel's failure to recognize and submit the sentencing court's failure to comply with the Cal Rules of Court; said sentencing court used count 1 to enhance and impose the upper term as to count 2

Result: Denied Date of Result 4/30/07

II. Name of Court Supreme Court of California

Type of Proceeding Petition For Writ of California

Grounds raised (Be brief but specific):

- a. \*Same issues as previously raised in Alameda County Superior Court.
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

Result: Denied Date of Result 3/19/2008

III. Name of Court \_\_\_\_\_

Type of Proceeding N/A

Grounds raised (Be brief but specific):

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

Result \_\_\_\_\_ Date of Result \_\_\_\_\_

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court? Yes ☐ No ☒

\_\_\_\_\_  
(Name and location of court)

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: \_\_\_\_\_



**Claim One**

**The Trial Court Erroneously Selected The  
"Upper Term" And "Full Term Consecutive  
Sentence" As To Count 2**

The trial/sentencing court as a matter of judicial protocol during the sentencing proceedings state its reasons as a matter of sentencing choice, in this case "imposition of the Upper Term - consecutive." The sentencing court Must state its reasoning for imposition for **Penal Code §667.6(c)**, as opposed to sentencing petition pursuant to **Penal Code §1170.1(a)**. The transcript of Sentencing is here attached for this court's review. It is noteworthy the sentencing court gave no judicial and or legal justification for said sentence imposed.

Imposition of sentences under this "**special provision**" of **Penal Code §667.6(c) & (d)** are referred to as "**full boat consecutive sentences**." Review of the attached sentencing transcript reveal the obvious revelation the sentencing court imposed the "**full boat - full term stacking**" of said sentence imposed to petitioner. It is also a further revelation and legal fact of law the sentencing court had absolutely no justification whatsoever to impose said sentence to petitioner.

The sentencing court further failed miserably to comply with the **California Rules of Court**, which mandate sentencing court state upon the record during sentencing proceedings its reasons for employing the sentencing choice selected. In this case the legal reasoning as to "**why**" **Penal Code §667.6(c) & (d)** was imposed.

The sentencing court erroneously used **count 1 to enhance and impose the upper term as to count 2**. Once again the sentencing court made unto itself non-legal and non-judicial aggravating factors to justify imposition of **full-boat - full-term stacking of consecutive sentences**. It is also noteworthy this certainly was a matter the jury should have had the sole opportunity of considering. Not the trial judge.

Review of the enclosed and attached Sentencing Transcript will clearly reveal the sentencing court used the "**age of the victim**" to further the sentencing court's agenda. Petitioner, based upon the "off-the-record comments by the sentencing court" **DOES NOT** rule out the alleged victim's race as a major factor in conjunction with the imaginary court-stated vulnerability of this street-wise victim.

It is most interesting how skillfully the sentencing court "said some required words as window-dressing" for the record, yet and while acknowledged, did not act upon those very same words and phrases.

The sentencing court, on the record, acknowledged petitioner "came forth" to law enforcement and made plain who the actual perpetrator were and led law enforcement to where these individuals could be found. Plain and simply put ... minus petitioner's actions and as the sentencing court acknowledged, it is highly improbable an arrest would ever have been made in this case. (Sentencing Transcript, Pg ).

## **Claim Two**

### **Petitioner Object To The Sentencing Court's Reliance On Facts Not Found By A Jury To Impose The Upper Term**

The sentencing court blatantly violated petitioner's **Six Amendment** right to a jury determination by relying on facts not found to be true by a jury to further the sentencing court's agenda, its justification in the sentencing court's imposition of of the upper term of **9 years consecutive for violation of Penal Code §261(a)(2), §264.1, and §261(a)(2).**

The sentencing court considered as aggravating circumstances petitioner's prior unsatisfactory performance on probation. The sentencing court stated during the sentencing proceedings the court found the victim particularly vulnerable because of the age of the victim coupled with the fact the victim being highly intoxicated. The sentencing court found no error in this mind-set which is suspect as a matter of law, People v. Black, (2005) 35 Cal.4th 1258. The sentencing court is in error. The damage done to petition was not harmless. The unsubstantiated phantom-aggravation the sentencing court opted to create and use predicated upon judicial innuendo served to extend the time petitioner must spend in state prison! The prejudice, the harm done to petitioner is substantial.

## **Claim Three**

### **Imposition Of An Upper Term Sentence Violated Petitioner's Federal Constitutional Right To Proof Of Each And Every Element And Allegation Charged Beyond A Reasonable Doubt With Due Process of Law In Conjunction With The Sixth And Fourteenth Amendment To The United States Constitution.**

Under CUNNINGHAM, imposition of California's Upper Term based on facts enumerated in Cal Rules of Court, Rule 4.421, found true by a judge by a preponderance of the evidence is unconstitutional.

In Blakely v. Washington, (2004) 542 U.S. 296,313, The United States Supreme Court held that "every defendant has the right to insist that the prosecutor prove to the jury all facts legally essential to the punishment." This means



there exist a federal constitutional right to a jury trial and proof beyond a reasonable doubt "for any fact (other than prior convictions) that increase the maximum penalty for a crime," Apprendi v. New Jersey, (2002) 50 U.S. 466, 476, 490.

The minimum sentence to which a judge can sentence a defendant without additional factual findings by a jury is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant," Blakely v. Washington, supra, 542 U.S. at p.330, emphases mine.

Subsequent to BLAKELY, the California Supreme Court reasoned that since the Determinate Sentencing Law (DSL) triad represents a "statutory range" which the judge may impose based upon traditional judicial fact-finding attendant to the imposition of sentence, imposition of the upper term is the statutory maximum in California, People v. Black, (2005) 5 Cal.4th 1238. However, on January 22, 2007, the United States Supreme Court "rejected the California Supreme Court reasoning in BLACK, nullifying that decision. CUNNINGHAM established that because imposition of DSL Upper Term requires findings of additional aggravating circumstances beyond the minimum elements of the offense and that "the middle term prescribed in California's statutes, not the upper term, is the relevant statutory maximum" for APPENDI-BLANKELY purposes, CUNNINGHAM v. CALIFORNIA, SUPRA, SLIP OPN. at pp.15-16[166 L.Ed.2d at p. 873]. "Because circumstances in aggravation are found by the judge, not the jury, and need only be established by a preponderance of the evidence, not beyond a reasonable doubt [citation], the DSL violates APPENDI'S Bright-Rule." (Ibid)

Rejecting the reasoning in BLACK, the high court held, "Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the system cannot withstand measurement against our Sixth Amendment precedent. [Fn.]" CUNNINGHAM v. CALIFORNIA, SUPRA slip opn. at p. 321 [166 L.Ed.2d at P.876.] CUNNINGHAM confirms that the sentencing judge's determination of aggravating factors and his reliance on those factors to impose the middle term violated petitioner's constitutional rights to a jury trial further denying petitioner procedural due process of law and further denyin equal protection of the law.Under CUNNINGHAM, BLAKELY, and APPENDI, "Other than the fact of a prior conviction, ANY FACT THAT INCREASES THE PENALTY FOR A CRIME BEYOND THE PRESCRIBED STATUTORY MAXIMUM MUST BE SUBMITTED TO A JURY, AND PROVED BEYOND A REASONABLE DOUBT," CUNNINGHAM v. CALIFORNIA, supra, slip opn. at p. 1 [166 L.Ed.2s at p. 864; APPENDI v. NEW JERSEY, supra, 530 U.S. at p.490; BLANKELY V. WASHINGTON, supra, 542 U.S. at p.301.

The sentencing court imposed two consecutive Upper Terms. The appellate record was not returned to petitioner upon conclusion of the appeals process. The court appointed counsel on appeal retained all files and records. However, the sentencing court noted petitioner to be the oldest of the three defendants and that petitioner expressed more remorse than of the defendants( RT 1710-1718).

The sentencing court failed to state its rational further failing to state what standard of proof the court relied upon in making its findings of aggravating circumstances. Deductive reasoning from the silence on the record by the court concludes the sentencing court found the aggravating factors to be true by rules created and implimented unto itself by the sentencing court, see Rules of Court, Rule 4.420(b), PEOPLE v MOSLEY, (1997) 53 Cal.App. 4th 489, 496 [presumption on a silent record is that the court followed settled law]; PEOPLE v SCOTT, (1994) 9 Cal.4th 331, 349 [settled law was that the preponderance standard applied].) In view of the sentencing court's finding of aggravating factots by a lower standard of proof, the court's selection of the upper term was tainted by BLANKELY error, thus petitioner's sentence is unconstitutional, UNITED STATES v. VELASCO-HEREDIA, (9th Cir 2003) 319 F. d 1080, 1085 [APPRENDI error occurred when trial court used the preponderance standard at sentencing to determine drug quantity].)

#### **Claim Four**

Appellant Counsel Failed In That Counsel Allowed Without Objection The Sentencing Court's Failure To Adhere To The California Rules Of Court, Further Not Objecting To The Sentencing Court Erroneously Using Count One As The Quasi-Vehicle To Abridge In-Justification To Impose The Upper Term As To Count Two

Petitioner has a right to the effective assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution and the California Constitution, Article 1, §15.

To establish a claim of ineffective assistance of counsel petitioner must prove: 1. Appellate counsel's representation fell below an objective standard of reasonableness, and 2. There is a reasonable probability that, but for counsel's error, the results of the proceedings would have been different, STRICKLAND v. WASHINGTON, 466 U.S. 668, 688, 694, 697 (1984).

The Sixth Amendment to the United States Constitution and Article 1, §15 of the California Constitution, "entitle the defendant not to some bare assistance but rather to effective assistance of counsel. Speciiically, it entitles him to 'the reasonably competent assistance of an attorney acting as his diligent conscientious advocate,'" (Id. at p. 215, quoting United States v. DeCOSTER, (D.C. Cir. 1973) 487 F.2d 1197, italics in original citation omitted.)

This right requires that "before counsel undertake to act at all he (or she) will make a rational and informed decision on strategy and tactics founded on adequate investigation and preparation," PEOPLE v. LEDESMA, (1987) 43 Cal.3d 171, at p. 215 [293 Cal.Rptr.404, 729 P.2d 839.]

The state and federal constitution guarantee persons deprived of their liberty to have the right to submit a petition for writ of habeas corpus, U.S. Const., Art.1, §9; Cal. Const., Art.1, §11. Said habeas corpus petition "has been aptly termed the 'safeguard' and the 'palladium of our liberties,'" IN RE CLARK, (1993) 5 Cal.4th 750, 764, 21 Cal.Rptr.2d 509, 855 P.2d 729, (citation omitted). This very well may be the last safeguard our judicial system provides for persons whose conviction were wrongful, (Id. at p. 804, 21 Cal.Rptr.2d 509, 855 2d 729).

"[A] habeas corpus petition bears the burden of establishing that the judgment under which he or she is restrained is invalid. [Citation.] To do so, he or she must prove, by preponderance of evidence, facts that establish a basis for relief on habeas corpus, [Citation,] "IN RE VISCIOTTI, supra, 14 Cal.4th at p. 51, 58 Cal.Rptr.2d 801, 926 P.2d 987.

The Court of Appeal, First Appellate District, appointed Rodney R. Jones, POB 189, Mendocino, CA 95460, (707) 937-0549, as appellate counsel to represent petitioner in the Court of Appeal. Petitioner here request this court be apprised appellate counsel raised the following two issues: 1. The sentencing court violated due process by refusal to sever trials, and 2. Resulting admission or exclusion of evidence.

Petitioner initially submitted a petition for writ of habeas corpus to the sentencing court for consideration and correction. Said petition was denied. Petitioner submitted a petition for writ of habeas corpus to the California Supreme Court. This petition was also denied. However, and interesting to note is the reasoning for said denial by the sentencing court.

The Sentencing Court stated: "Also, petitioner makes the following two contentions: (1) that the trial court erred when it failed to comply with the California Rules of Court when it imposed consecutive terms pursuant to Penal Code §667.6(c) and (d), without stating the reasons on the record, and (2) that the sentencing court erroneously used Count One to enhance and impose the upper term as to Count Two. These last two contentions are based upon the record that was available during appeal. Petitioner timely filed an appeal of the judgement imposed in his case, raising many sentencing issues. However, petitioner failed to raise this ground on appeal, although it could have and should have been raised at that time. Therefore, petitioner's second contention also fails," IN RE DIXON, (1953) 41 Cal.2d 756, 759; IN RE HARRIS, (1993) 5 Cal.4th 813, 829 - 830.

The Superior Court in its decision to deny said habeas corpus petition was based upon the fact appellate counsel "dropped the ball" in effectively representing petitioner. Rodney R. Jones, Attorney At Law, a professional criminal advocate and given the responsibility to ascertain, research and submit to the Court of Appeal for consideration and rectification issues discovered by professional counsel Jones. On the other hand. Failure by professional counselor Jones, his blatant lackadisical failures to research the law that caused JONES to omit or neglect an otherwise meritorious representation is



grounds for a claim of ineffective assistance of counsel, PEOPLE v IBARRA, 60 Cal.2d 460 86 P.2d 487, 34 Cal.Rptr. 853.

Mr. Jones had the entire court record before him. No problem there. However, and despite the fact the entire record was right before Jones' eyes ... that record must be reviewed in earnest and not as a matter of judicial lip-service of going through the motions and saying what needs to be said when required to say it. Had Jones actually reviewed the file the **sentencing proceedings** would have literally 'jumped off the pages' right at Jones. **There is no possible way issues here presented would have escaped Jones' attention; unless of course the record was not reviewed.**

Petitioner is extremely critical of Jones as petitioner sits in prison resulting from Jones' failings! Jones overlooked the very issues petitioner raised on habeas corpus. Furthermore, the response given by the sentencing court to petitioner's habeas corpus did not state issues raised by petitioner were bogus and or invalid. The court pointed at appellate counsel for "not raising" said issues. There is no doubt in petitioner's mind had said issues raised on appeal a substantial difference in the outcome would have taken place. This is not a question of appellate counsel tactics. This is however, a question as to the effective assistance and or the "lack thereof" which has substantially harmed petitioner as petitioner remains confined in state prison directly the result of what appellate counsel failed to do. (also see IN RE BANKS, (1971) 4 Cal.3d 337 CR 93 591

For the foregoing legal and just reason petitioner respectfully request this matter be ordered returned with instructions to the sentencing court for rehearing and sentencing.

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

Cunningham v. California, (Jan. 22, 2007) No. 05-6551; WL 125687  
People v. Black (2005) 35 Cal.4th 1238  
Blakely v. Washington (2004) 542 U.S. 296, 313  
Apprendi v. New Jersey, supra, 50 U.S.  
People v. Mosley (1997) 53 Cal.App. 4th 489, 496  
People v. Scott (1994) 9 Cal.4th 331  
United States v. Velasco-Heredia (9th Cir. 2003) 319 F.3d 1080

Do you have an attorney for this petition? Yes ☐ No ☒

If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on July 21, 2008

Date

Signature of Petitioner Dameon Ray Franklin

FIRST JUDICIAL DISTRICT

THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE:

DAMEON RAY FRANKLIN

ON

HABEAS CORPUS

Case NO.

PETITION FOR WRIT OF  
HABEAS CORPUS

TO: THE CHIEF JUSTICE, AND  
ASSOCIATE JUSTICES OF  
THE CALIFORNIA SUPREME COURT:

Dameon R. Franklin  
T-29665  
Kern Valley State Prison  
PO Box 5103 C4-107  
Delano, CA 93216



Name Dameon R. Franklin  
 Address T-29665  
kern valley state Prison  
Po Box 5103 CY-107 Delano, CA  
93216  
 CDC or ID Number T-29665

(Court)

## PETITION FOR WRIT OF HABEAS CORPUS

<u>Dameon Ray Franklin</u>	
Petitioner	vs.
Respondent	

No. \_\_\_\_\_

(To be supplied by the Clerk of the Court)

## INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

## This petition concerns:

- ☐ A conviction
 ☐ Parole  
☐ A sentence
 ☐ Credits  
☒ Jail or prison conditions
 ☐ Prison discipline  
☐ Other (specify): \_\_\_\_\_

1. Your name: DAMEON RAY FRANKLIN  
 2. Where are you incarcerated? KERN VALLEY STATE PRISON  
 3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

**COUNT 1, RAPE W/CONCERT; COUNT 2, RAPE W/CONCERT; COUNT 3, ORAL COPULATION  
COUNT 4, ORAL COPULATION**

- b. Penal or other code sections: §261(A)(2); §264.1 AND §288(A)(D)  
 c. Name and location of sentencing or committing court: ALAMEDA COUNTY SUPERIOR COURT  
1225 FALLON ST. OAKLAND, CA 94612-4293  
 d. Case number: 136007B  
 e. Date convicted or committed: 6/21/01  
 f. Date sentenced: 9/7/01  
 g. Length of sentence: 18 YEARS  
 h. When do you expect to be released? NO CLUE  
 i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:  
THOMAS J. BLOOM ATTORNEY AT LAW 1330 BROADWAY OAKLAND, CA 94612

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

### PROCEDURAL AND FACTUAL SUMMARY

Petitioner and three other young men were charged in May 2001 with rape in concert, oral copulation by force/fear, and related crimes. After a jury trial, petitioner was convicted of two counts of rape and two counts of oral copulation. The jury found they acted in concert, (CT 191, 253). Petitioner was sentenced to consecutive upper terms on the two rape counts and concurrent mid-terms on the remaining charges, (CT 299, 305). Petitioner's conviction was affirmed June 2, 2003.

After work on September 4, 1998, Jane Doe met a young man named Drew and decided to "hang out" with him. They were soon joined by others, including petitioner. They all went to a nearby park and drank alcohol. Doe said she got "friendly" with a couple of the young men and remained drinking until it was dark. She eventually wanted to go home and they accompanied her to the Bart station. Once there, however, they boarded a bus and ended up in Rockridge. They got off and walked to a school yard where the offenses occurred, (RT 335-358, 370-405).

#### 6. Ground 1

##### The Trial Court Erroneously Selected The "Upper Term" And "Full Term Consecutive Sentence As To Count 2

The trial court MUST as a matter of judicial protocol state its reasons for imposing the upper term and imposing consecutive terms. The sentencing court MUST state its reasons for imposing Penal Code §667.6(c), as opposed to employing the provisions of Penal Code §1170.1(a). The Sentencing Transcripts here attached express no reference in its sentencing scheme to support said sentence imposed; see People v. Smith, (1984)155 CA3d 539, 546, 202 CR 259.

Sentences imposed under this "special provision" of Penal Code §667.6(c)&(d) are referred to as "full boat consecutive sentences." Review of the sentencing transcript becomes obvious the sentencing court employed the "full boat/full term stacking" scheme.

The sentencing court failed to comply with California Rules of Court which mandate the sentencing court state its reasons for employing the provisions of Penal Code §667.6 (c)&(d). Furthermore the sentencing court erroneously employed Court 1 to enhance and impose the upper term as to Count 2. Petitioner here suffice it to say the sentencing court made unto itself

non-judicial aggravating factors to further the sentencing court's latent agenda to impose full boat/full term stacking consecutive sentences, a matter the jury should have considered, not that of the sentencing judge.

The sentencing court used the age and petitioner suspect, the race of the victim in conjunction with the imaginary court-stated vulnerability of the victim which is not an element of proper court consideration in sentencing petitioner.

It is also noteworthy while the sentencing court "verbally acknowledged" petitioner came forth to law authorities who the actual perpetrators were, leading to the arrest and conviction thereof, the sentencing court made no consideration as to petitioner. The sentencing court acknowledged it is highly unlikely an arrest would have been made minus petitioner's actions of coming forth. That is the extent of the sentencing court's consideration, **sentencing transcript, pg. ).**

## Ground 2

### **Petitioner Object To The Sentencing Court's Reliance On Facts Not Found By A Jury To Impose The Upper Term**

The sentencing court violated petitioner's **Six Amendment** right to a jury trial by relying on facts not found to be true by a jury as justification in sentencing petitioner to the upper term of **9 years consecutive** for violation of **Penal Code §261(a)(2), §264.1, and §261(a)(2).**

The sentencing court considered as aggravating circumstances petitioner's prior unsatisfactory performance on probation. In addition, the sentencing court stated during the sentencing the court found the victim particularly vulnerable because of the age of the victim, and the victim being highly intoxicated. Based upon the existing law at that time, the sentencing court found no error in this procedure, People v. Black, (2005) 35 Cal.4th 1238. The sentencing court is in error.

**Imposition Of An Upper Term Sentence Violated Petitioner's Federal Constitutional Right To Proof Of Each And Every Sentencing Fact Beyond A Reasobale Doubt And Due Process Under The Sixth And Fourteenth Amendment To The United States Constitution.**

**Under CUNNINGHAM, California Upper Terms Based On Facts Enumerated In Rule 4.421 Found True By A Judge By A Preponderance Of The Evidence Are Unconstitutional.**

**In Blakely v. Washington, (2004) 542 U.S. 296, 313, The United States**



Supreme Court held that "every defendant has the right to insist that the prosecutor prove to the jury all facts legally essential to the punishment." This means there exist a federal constitutional right to a jury trial and proof beyond a reasonable doubt "for any fact (other than prior conviction) that increases the maximum penalty for a crime," (Apprendi v. New Jersey, (2002)530 U.S. 466, 476, 490.) The maximum sentence to which a judge can sentence a defendant without additional factual findings by a jury is "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant," Blakely v. Washington, *supra*, 542 U.S. at p.303, *emphasis in original*.

Subsequent to BLAKELY, the California Supreme Court reasoned that, since the determinate Sentencing Law (DSL) triad represents a "statutory range" which the judge may impose based upon traditional judicial fact-finding attendant to the imposition of sentence, imposition of the upper term is the "statutory maximum" in California, (People v. Black, (2005)35 Cal.4th 1238.) But, on January 22, 2007, the United States Supreme Court rejected the California Supreme Court's reasoning in BLACK, nullifying that decision. CUNNINGHAM established that because a DSL upper term requires findings of additional aggravating circumstances beyond the minimum elements of the offense and that "the middle term prescribed in California's statutes, not the upper term, is the relevant statutory maximum" for APPRENDI-BLAKELY purposes, Cunningham v. California, *supra*, slip opn. at pp.15-16 [166 L.Ed2d at p. 873]. "Because circumstances in aggravation are found by the judge, not the jury, and need only be established by a preponderance of the evidence, not beyond a reasonable doubt [citation], the DSL violates Apprendi's bright-line rule." (Ibid.)

Specifically rejecting the reasoning in BLACK, the high court held, "Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the system cannot withstand measurement against our Sixth Amendment precedent. [Fn.]" Cunningham v. California, *supra*, slip opn. at p. 21 [166 L.Ed.2d at p.876]. CUNNINGHAM confirms that the sentencing judge's determination of aggravating factors and his reliance on those factors to impose the middle term violated petitioner's constitutional rights to a jury trial and due process. Under CUNNINGHAM, BLAKELY and APPRENDI, "Other than the fact of a prior conviction, ANY FACT THAT INCREASES THE PENALTY FOR A CRIME BEYOND THE PRESCRIBED STATUTORY MAXIMUM MUST BE SUBMITTED TO A JURY, and proved beyond a reasonable doubt," Cunningham v. California, *supra*, slip opn. at p.1 [166 L.Ed.2d at p.864; Apprendi v. New Jersey, *supra*, 530 U.S. at p.490; Blakely v. Washington, *supra*, 542 U.S. at p.301.

The sentencing court here imposed two consecutive upper base terms. Because the appellate record was not retained by counsel but returned to petitioner, it is not readily available and record notes have been relied on. The trial court did say it through a greater sentence could be justified

with respect to all three young offenders. The court noted petitioner was older than the co-defendants and seem to express more regret than remorse, (RT 1710-1718).

The record notes reflect the sentencing court did not state what standard of proof it relied upon in making the findings of aggravating circumstances. It must be deduced from this silence this court must conclude the sentencing judge found the aggravating factors true by a mere preponderance of the evidence in accordance with rule 4.420(b) of the California Rules of Court, People v. Mosley (1997)53 Cal.App.4th 489, 496 [presumption on a silent record is that the court followed settled law]; People v. Scott (1994)9 Cal.4th 331, 349 [settled law was that the preponderance standard applied].) In view of the sentencing court's finding of aggravating factors by a lower standard of proof, the court's selection of the upper term was tainted by Blankely error, thus appellant's sentence unconstitutional, see, United States v. Velasco-Heredia (9th Cir. 2003)319 F.3d 1080, 1085 [Appendi error occurred when trial court used the preponderance standard at sentencing to determine drug quantity].)

#### 7. Ground 3

Appellate Counsel Was Grossly Ineffective In His Failure To  
RECOGNIZE And Submit For The Court's Consideration The Sentencing  
Court's Failure To Comply With The California Rules Of Court,  
Sentencing Court Erroneously Used Count One To Enhance And Impose  
The Upper Term As To Count Two.

Petitioner has a right to the effective assistance of counsel guaranteed by the Sixth Amendment to the United States Constitution and the California Constitution, Article 1, section 15.

To establish a claim of ineffective assistance of counsel petitioner must prove: 1. Appellate counsel's representation fell below an objective standard of reasonableness, and 2. There is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, Strickland v. Washington 466 U.S. 668, 688, 694, 697 (1984).

The Sixth Amendment to the United States Constitution and Article 1, section 15 of the California Constitution, "entitle the defendant not to some bare assistance but rather to effective assistance of counsel. Specifically, it entitles him to 'the reasonably competent assistance of an attorney acting as his diligent conscientious advocate,'" (Id. at p.215, quoting United States v. DeCoster (D.C. Cir. 1973) 487 F.2d 1197, italics in original citation omitted.) This right requires that "before counsel undertake to act at all



he (or she) will make a rational and informed decision on strategy and tactics founded on adequate investigation and preparation," People v. Ledesma (1987) 43 Cal.3d 171, at p.215 [233 Cal.Rptr.404, 729 P.2d 839].

The state and federal constitution guarantee persons deprived of their liberty have the right to submit a petition for writ of habeas corpus, U.S. Const., Art.1, §9; Cal. Const., Art.1, §11. The petition for writ of habeas corpus "has been aptly termed 'the safe-guard and the palladium of our liberties,'" In re Clark (1993) 5 Cal.4th 750, 764, 21 Cal.Rptr.2d 509, 855 P.2d 729, (citation omitted). This very well may be the last safe-guard our judicial system provides for persons whose conviction were wrongful, (Id. at p.804, 21 Cal.Rptr.2d 509, 855 P.2d 729).

"[A] habeas corpus petition bears the burden of establishing that the judgement under which he or she is retrained is valid. [Citation.] To do so, he or she must prove, by a preponderance of the evidence, facts that establish a basis for relief on habeas corpus, [Citation,] "In re Visciotti supra, 14 Cal.4th at p.351, 58 Cal.Rptr.2d 801, 926 P.2d 987.

The Court of Appeal, First Appellate District, appointed Rodney R. Jones, POB 189, Mendocino, CA 95460, (707)937-0549, as appellate counsel to represent petitioner in the Court of Appeal. This court is here apprised appellate counsel raised the following issues: 1. The sentencing court was in violation of due process by refusal to sever trial, and 2. Resulting admission or exclusion of evidence.

Petitioner initially submitted a petition for writ of habeas corpus to the sentencing court for consideration and correction. Said petition was denied (see habeas corpus denial, exhibit ). Interesting to note is the written statement given pursuant to the California Rules of Court. Petitioner here direct this court to page 3 & 4 of the superior court denial. The superior court stated: "Also, Petitioner makes the following two contentions: (1)that the trial court erred when it failed to comply with the California Rules of Court when it imposed consecutive terms pursuant to Penal Code §667.6, subds. (c) and (d), without stating the reasons on the record, and (2)that the sentencing court erroneously used Count one to enhance and impose the Upper (term)as to Count two. These last two contentions are based upon the record that was available during his appeal. Petitioner timely filed an appeal of the judgement imposed in his case, raising many sentencing issues. However, Petitioner failed to raise this ground on appeal, although it could have and should have been raised it at that time. Therefore, Petitioner's second contention also fails," In re Dixon (1953) 41 Cal.2d 756, 759; In re Harris (1993) 5 Cal.4th 813, 829-830.

The superior court in its decision to deny petitioner's habeas corpus petition was based on the clearly established fact appellate counsel dropped

the ball. As a professional, appellate counsel has a responsibility to ascertain, research, and submit pertinent issues for the court's consideration. Failure to research the law that causes counsel to omit (or neglect an adequate representation) a defense is grounds for a claim of ineffective assistance of counsel, People v. Ibarra 60 Cal.2d 460 386 P.2d 487, 34 Cal.Rptr. 863.

Appellate counsel Jones had the entire record before him for his review. This record included the Transcript of Sentence. Jones' review, if in fact a review took place, the sentencing proceedings had to literally jump off of the page at Jones. Yet, Jones overlooked such a critical and pertinent issue as petitioner presented on habeas corpus. This is not about questioning appellate counsel's tactics and or the lack thereof. This is about the effective assistance of counsel in presenting pertinent issues before the Court of Appeal for review and consideration.

Petitioner direct this court to the denial of said habeas corpus petition and the language thereof. The Superior Court (denial) stated: "Petitioner failed to raise this ground on appeal, although 'it could have and should have been raised at .. at that time.'" Petitioner did not represent himself. Petitioner was represented on appeal by Rodney R. Jones, and therefore, plain and simply put ... appellate counsel could have and should have raised said issues on direct appeal, issues petitioner raised on habeas corpus. Petitioner suffice it to say petitioner's petition for writ of habeas corpus was denied due to appellate counsel's failure to timely raise the very same issues on direct appeal. Appellate counsel was ineffective. The Superior Court stopped short of using the language appellate counsel was ineffective. However, for the lack of any other existing befitting term ... appellate counsel was, ineffective. The Superior Court did not state petitioner's petition did not have merit. The Superior Court stated in no uncertain terms said issues were not addressed on direct appeal as they should have been. This juncture qualifies petitioner as the victim of appellate counsel's ineffectiveness, clearly the direct cause of petitioner's sentence not being having issue germane to petitioner's case addressed as they should have been. Appellate counsel is that sole cause due to ineffectiveness, In re Banks (1971) 4 Cal.3d 337 CR 93 591. Petitioner is adamant, appellate counsel's representation fell below an objective standard of reasonableness, and there is a strong probability that, but for counsel's error, the result of the court of appeal would have been different

The Superior Court denial (page 1) states the issues raised by petitioner on habeas corpus "Failed to exhaust appellate remedies." Of course and by all means judicial protocol mandate said issues petitioner presented on habeas corpus could have and should have been presented on direct appeal. As this court will discover further in this petition the actions of Rodney R. Jones does not reflect the actions of seasoned professional attorneys. Appellate counsel at no time ever consulted with petitioner prior to the submission of Opening Brief or anything else. Nevertheless, petitioner's case was affirmed resulting from the misrepresentation of appellate counsel.

**Rodney R. Jones**, a marginal attorney at best was appointed by the Court of Appeal to represent petitioner. Petitioner since the appointment of **Mr. Jones** has learned court appointed attorneys are paid a fix amount whether that attorney wins or loses. Appointed attorneys receive no additional fee if they win and no reduction of fee if they loose. My point is this. No incentive exist for attorneys to do anything other than the bare minimum requirement; a quasi window-dressing. **Mr. Jones** is such an attorney.

Petitioner has consulted with three seasoned attorneys: **Charles Sevilla**, 1010 2nd Ave, San Diego, CA 92101, **Daniel J. Teola**, 12304 Santa Monica Blvd, Los Angeles, CA 90025, and **Charles Carbon**, 3128 16th St, San Francisco, CA 94103. Each attorney had the opportunity to review the sentencing transcript for themselves. Each attorney respectively voiced their opposition to the sentencing stating the exact same issues petitioner raised on habeas corpus. Furthermore, each and every attorney here mentioned, in harmony stated said issues raised by petitioner, correctly as a matter of judicial protocol, should have been raised on direct appeal.

Petitioner further allude to the fact established and existing case law existed at the time appellate counsel misrepresented petitioner's appeal. Petitioner, a layman in the law relied upon appellate counsel to research, prepare and submit issues pertinent to petitioner's case. This was not done. Petitioner's case remains affirmed resulting from the blunders of **Rodney R. Jones**, appellate counsel. Petitioner here request this court to assume original jurisdiction of this case.

For the foregoing just and valid reasons petitioner request this case be remanded back to superior court for re-sentencing with specific instructions as to the sentencing of petitioner.



8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

Court of Appeal - First Appellate District

b. Result Affirmed

c. Date of decision: June 2, 2003

d. Case number or citation of opinion, if known: A096254

e. Issues raised: (1) Violation of due process by refusal to sever trial and resulting admission or exclusion of evidence

(2) \_\_\_\_\_

(3) \_\_\_\_\_

f. Were you represented by counsel on appeal? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:

Rodney R. Jones, POB 189, Mendocino, CA 95460 (707)937-0549

9. Did you seek review in the California Supreme Court? ☐ Yes ☒ No. If yes, give the following information:

a. Result \_\_\_\_\_

b. Date of decision: \_\_\_\_\_

c. Case number or citation of opinion, if known: \_\_\_\_\_

d. Issues raised: (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

Ineffective assistance of Appellate Counsel, In re BANKS (1971) 4 Cal.3d 337  
CR 93 591

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

N/A

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: ALAMEDA COUNTY SUPERIOR COURT

(2) Nature of proceeding (for example, "habeas corpus petition"): Petition For Writ of Habeas Corpus

(3) Issues raised: (a) The trial court erred when it failed to comply with the California Rules of Court when it imposed consecutive terms pursuant to Penal Code §667.6(c)&(d), without stating the reasons on the record  
(b) sentencing court erroneously used count one to impose upper term/count two

(4) Result (Attach order or explain why unavailable): Denied

(5) Date of decision: April 30, 2007

b. (1) Name of court: \_\_\_\_\_

(2) Nature of proceeding: \_\_\_\_\_

(3) Issues raised: (a) \_\_\_\_\_

(b) \_\_\_\_\_

(4) Result (Attach order or explain why unavailable): \_\_\_\_\_

(5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

Cunningham v. California only recently decided.

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

N/A

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 9.28.07

Darmon Ray Franklin  
(SIGNATURE OF PETITIONER)

**E X H I B I T S**

1. **PETITION FOR WRIT OF HABEAS CORPUS (ALAMEDA COUNTY SUPERIOR COURT)**
2. **ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS**
3. **ABSTRACT OF JUDGEMENT**
4. **TRANSCRIPT OF SENTENCE**
5. **PROBATION OFFICER'S REPORT AND RECOMMENDATION**
6. **DECLARATION OF DAMEON RAY FRANKLIN**



**E X H I B I T #1**

**PETITION FOR WRIT OF HABEAS CORPUS (ALAMEDA COUNTY SUPERIOR COURT )**

Darreon Ray Franklin T-29665  
California State Prison - Los Angeles County  
44750 60th St. West  
Lancaster, CA 93536

EMERGED  
ALABAMA COUNTY

MAR 07 2007

CLERK OF THE SUPERIOR COURT

By

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

**IN Re:**

DAMEON RAY FRANKLIN,

ON

**HABEAS CORPUS.**

Case Number 136007B

PETITION FOR WRIT OF  
HABEAS CORPUS

TO: THE HONORABLE ROBERT B. FREEDMAN, JUDGE  
SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF ALAMEDA, DEPARTMENT No. 2

# PETITION FOR WRIT OF HABEAS CORPUS

## This petition concerns:

- ☐ A conviction
 ☐ Parole  
☒ A sentence
 ☐ Credits  
☐ Jail or prison conditions
 ☐ Prison discipline  
☐ Other (specify): \_\_\_\_\_

1. Your name: DAMEON RAY FRANKLIN
2. Where are you incarcerated? CALIFORNIA STATE PRISON - LOS ANGELES COUNTY
3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

COUNT 01, RAPE W/CONCERT; COUNT 2, RAPE W/CONCERT; COUNT 3, ORAL COPULATION  
COUNT 4, ORAL COPULATION

- b. Penal or other code sections: \$261(A)(2)/264.1 \$288(A)(D)
- c. Name and location of sentencing or committing court: ALAMEDA COUNTY SUPERIOR COURT  
1225 FALLON STREET, OAKLAND, CA. 94612-4293
- d. Case number: 136007B
- e. Date convicted or committed: 06/21/01
- f. Date sentenced: 09/07/01
- g. Length of sentence: 18 YEARS
- h. When do you expect to be released? ???
- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:  
THOMAS J. BROOM, ATTORNEY AT LAW 1330 BROADWAY, OAKLAND, CA 94612

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: \_\_\_\_\_

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

## **GROUND S FOR RELIEF**

### **6. GROUND 1. THE TRIAL COURT ERRONEOUSLY SELECTED THE UPPER TERM AND FULL TERM CONSECUTIVE SENTENCE AS TO COUNT 2**

The trial court MUST as a matter of judicial protocol state its reasons for imposing the upper term and imposing consecutive terms. Furthermore, the sentencing court must also state its reasons for choosing Penal Code §667.6(c), instead of employing the provisions of Penal Code §1170.1(a). The Sentencing Transcript here attached makes no reference in its sentencing scheme to support said sentence imposed, see People v. Smith, (1984)155 CA3d 539, 546, 202 CR 259.

Sentences imposed under this "special provision" of Penal Code §667.6(c)&(d) are referred to as "full boat consecutive sentences."

It is more than obvious the sentencing court employed the "full boat/full term stacking scheme," plain and simply put petitioner's sentencing is terrible flawed for the following reasons:

1. The sentencing court failed to comply with California Rules of Court in stating reasons for employing the provisions of PenC §667.6(c)&(d)
2. The sentencing court erroneously used Count 1 to enhance and impose the Upper Term as to Count 2
3. The sentencing court violates the United States Supreme Court decision in CUNNINGHAM
4. The sentencing court made unto itself non-judicial aggravating factors to further impose a full boat/full term consecutive sentence; a matter for the jury's consideration. Not that of the sentencing judge.
5. The sentencing court used the age, and is suspected, latently used the race of the victim in conjunction with the court stated "vulnerability" of the victim is not a judicial proper element for the erroneous sentencing scheme employed by this court.

## **LAW AND ARGUMENT**

The United States Supreme Court decided CUNNINGHAM v. California (January 22, 2007, No. 05-6551; WL 135687) in which the Supreme Court ruled that the California Determinate Sentencing Scheme violates The Sixth Amendment Right To A Jury Trial.

- A. Petitioner here object to the sentencing court's reliance on facts not found by a jury to impose the upper term.

The sentencing court violated petitioner's Sixth Amendment right to a jury trial by relying on facts not found to be true by a jury to justify in sentencing petitioner to the Upper Term of 9 years for violating Penal Code section 261(a)(2) 264.1, 261(a)(2).

The Sentencing court considered as aggravating circumstances petitioner's prior unsatisfactory performance on probation. In addition, the sentencing court clearly stated during sentencing the court found the victim particularly vulnerable because of the age of the victim and the victim being highly intoxicated. Based on the law as it existed at the time, the sentencing court found no error in the procedure used, see People v. Black (2005)35 Cal.4th 1238.

B. In CUNNINGHAM v. California (January 22, 2007, No. 05-6551; WL 13568), the United States Supreme Court ruled that the California Determinate Sentencing statute violated the Sixth Amendment right to a jury trial by permitting judges to make factual findings that justify imposing the upper term.

In CUNNINGHAM v. California, *supra*, (No. 05-6551 WL 135687), the court engaged in lengthy analysis of the California sentencing scheme. The California statute is unconstitutional because it requires imposition of the middle term of the applicable triad, unless facts that justify imposition of the upper term are found to be true by the court. The California statute does not require that facts that justify imposition of the upper term be found to be true by a jury or admitted by the defendant. The court stated that,

Because circumstances in aggravation are found by the judge, not the jury, and need only be established by a preponderance of the evidence, not beyond a reasonable doubt, see *supra*, at 5, the DSL violates APPREDI'S BRIGHT-LINE RULE: Except for a prior conviction, "ANY fact that increases the penalty for a crime beyond the prescribed statutory maximum MUST BE SUBMITTED TO A JURY, and proved beyond a reasonable doubt," 530 U.S., at 490.

(Id. at p.16, slip opinion)

To summarize: Contrary to the BLACK court's holding, our decision from APPREDI to BOOKER point to the middle term specified in California's statutes, NOT THE UPPER TERM, as the relevant statutory maximum. Because the DSL authorizes the judge, not the jury, to find the facts permitting an upper term sentence, the system cannot withstand measurement against our Sixth Amendment precedent.

(Id. at p. 21, slip opinion.(footnote omitted)).

C. Granting a rehearing is the most expeditious way for the court to review its initial decision on this issue.

Pursuant to Cal. Rules of Court, Rule 8.268(a), this court has the absolute authority to grant rehearing. This is the most expeditious way to correct sentencing errors and apply CUNNINGHAM to this case.



8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

Court of Appeal, First Appellate District

b. Result Affirmed

c. Date of decision: ?

d. Case number or citation of opinion, if known: ?

e. Issues raised: (1) Never received copy of Opening Brief Issues?

(2) \_\_\_\_\_

(3) \_\_\_\_\_

f. Were you represented by counsel on appeal? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:

Rodney R. Jones, 45100 Main St., Mendocino, CA 94560 (707)937-0549

9. Did you seek review in the California Supreme Court? ☐ Yes ☒ No. If yes, give the following information:

a. Result N/A

b. Date of decision: \_\_\_\_\_

c. Case number or citation of opinion, if known: N/A

d. Issues raised: (1) \_\_\_\_\_

(2) \_\_\_\_\_

(3) \_\_\_\_\_

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

Due to the most recent ruling in Cunningham v. California, January 22, 2007,

I discovered this case was applicable to my sentencing procedures and I filed with the sentencing court immediately for redress.

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 C.R. 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review.

N/A

b. Did you seek the highest level of administrative review available? ☐ Yes. ☐ No. N/A

Attach documents that show you have exhausted your administrative remedies.



12. Other than direct appeal, have you filed any other petition, application, or motion with respect to this conviction, commitment, or issue in any court? ☐ Yes. If yes, continue with number 13. ☒ No. If no, skip to number 15.

13. a. (1) Name of court: \_\_\_\_\_  
 (2) Nature of proceeding (for example, "habeas corpus petition"): \_\_\_\_\_  
 (3) Issues raised: (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (4) Result (Attach order or explain why unavailable): \_\_\_\_\_  
 (5) Date of decision: \_\_\_\_\_
- b. (1) Name of court: \_\_\_\_\_  
 (2) Nature of proceeding: \_\_\_\_\_  
 (3) Issues raised: (a) \_\_\_\_\_  
 (b) \_\_\_\_\_  
 (4) Result (Attach order or explain why unavailable): \_\_\_\_\_  
 (5) Date of decision: \_\_\_\_\_

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

Issues here presented were only recently discovered. The U.S. Supreme Court ruled directly on point with the issues here presented January 22, 2007. No delay in presenting the same back to the sentencing court for sentencing adjustment.

16. Are you jointly represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

If necessary, private counsel shall be retained for the purposes of prospective hearing on the sentencing issues here presented.

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes. ☒ No. If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

N/A

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: March 1, 2007

  
 (SIGNATURE OF PETITIONER)

**E X H I B I T #2**

**ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

RECORDED  
FILED  
ALAMEDA COUNTY

APR 30 2007

CLERK OF THE SUPERIOR COURT  
By FIL R. CRUZ Deputy

In re

DAMEON RAY FRANKLIN

On Habeas Corpus.

No. 136007B

**ORDER DENYING PETITION  
FOR WRIT OF HABEAS CORPUS**

This Court having reviewed the Petition for Writ of Habeas Corpus filed on March 7, 2007, by Petitioner DAMEON RAY FRANKLIN ("Petitioner"), **NOW HEREBY ORDERS:**

The Petition is denied.

Relying on *Cunningham v. California* (Jan. 22, 2007, No. 05-6551) 549 U.S. \_\_\_, 127 S. Ct. 856, 166 L. Ed. 2d 856 (*Cunningham*) Petitioner contends that the trial court violated his Sixth Amendment right to a jury trial when the trial sentencing court imposed the upper term in his case. (See "reasons" nos. 3, 4, 5 on p.3 of the Petition.) Because his conviction became final before the *Blakely* decision, and *Blakely* is not retroactive, the Petition is denied. Petitioner's other two claims are also fail because [REDACTED]

*Cunningham* relied on *Blakely*, and as such, it does not appear that *Cunningham* announced a new rule. (See *Saffle v. Parks* (1990) 494 U.S. 484, 488.)

Therefore, [REDACTED] final

[REDACTED] Instead, the

retroactivity of *Cunningham* goes back to *Blakely*, which was decided on June 24, 2004.

The United States Supreme Court granted certiorari in *Burton v. Stewart* (2007) 549 U.S. \_\_\_, 127 S. Ct. 793 (*Stewart*) to decide whether *Blakely* announced a new rule and, if so, whether it applies retroactively on collateral review. However, the *Stewart* Court did not reach the issue because of a jurisdictional defect in the petition. Nonetheless, recent United States Supreme Court precedent indicates that *Blakely* is not a new substantive rule that applies retroactively to cases already final on direct review, but a new rule of procedure without retroactive application. (See *Schriro v. Summerlin* (2004) 542 US 348 [holding that *Ring v. Arizona* (2002) 536 U.S. 584 is not retroactive to cases already final on direct review]; *Whorton v. Bockting* (2007) 549 U.S. \_\_\_, 127 S. Ct. 1173, 2007 U.S. LEXIS 2826 [holding that *Crawford v. Washington* (2004) 541 U.S. 36, is not retroactive to cases already final on direct review.].)

Moreover, California court of appeal decisions, binding on this court, have held that *Blakely* is merely a new procedural rule that is not subject to retroactive application to cases final as of the date it was filed. (See *People v. Amons* (2005) 125 Cal.App.4th 855, 866; *In re Consiglio* (2005) 128 Cal.App.4th 511, 516; *Schardt v. Payne* (2005) 414 F.3d 1025, 1031.)

Thus, whether Petitioner is entitled to attack his sentence depends, in part, on whether Petitioner's conviction and sentence were final as of the time the *Blakely* decisions became final. State convictions are final "for purposes of retroactivity



analysis when the availability of direct appeal to the state courts has been exhausted and the time for filing a petition for a writ of certiorari has elapsed or a timely filed petition has been finally denied.” (*Caspari v. Bohlen* (1994) 510 U.S. 383, 390, see also *Clay v. United States* (2003) 537 U.S. 522, 527.)

In June 2001, Petitioner was convicted by jury of two counts of forcible rape in concert and two counts of forceful oral copulation in concert. On September 7, 2001, Petitioner was sentenced to 18 years in prison. The sentencing judge imposed the upper term of nine years on each forcible rape in concert counts to run consecutive (full term) to each other, and the mid-term of 7 year on each the forcible oral copulation count, to run concurrent. On June 2, 2003, the Court of Appeal of the State of California, First Appellate District, Division three, affirmed the judgment. (See Unpublished Opinion *People v. Franklin*, A096254.) The California Supreme Court denied review on August 27, 2003. (See California Supreme Court docket no. S117232.) It does not appear that Petitioner filed a petition for a writ of certiorari with the Supreme Court. Petitioner’s conviction and sentence therefore became final 90 days later, on November 25, 2003. (See 28 U.S.C. § 2101(d); Supreme Court Rules, rule 13.) Petitioner’s conviction was final at the time of the *Blakely* decision, therefore *Cunningham/Blakely* do not apply to his case.

Also, Petitioner makes the following two contentions: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These last two contentions are based upon the record that was available during his appeal. Petitioner timely filed an appeal of the judgment imposed in his case, raising many sentencing issues.

However, [REDACTED]  
[REDACTED]

(*In re Dixon* (1953) 41 Cal. 2d 756, 759; *In re Harris* (1993) 5 Cal.4th 813, 829-830.)

DATED: ~~APR 30~~ 2007

LARRY J. GOODMAN

---

HON. LARRY GOODMAN  
JUDGE OF THE SUPERIOR COURT

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Dept. No. 9

Date: **March 07, 2007**

Hon. LARRY GOODMAN, Judge

Danielle Labrecque, Dep. Clk.  
Not Reported, Reporter

**DAMEON FRANKLIN**

Petitioner

vs.

**PEOPLE OF THE STATE OF CALIFORNIA**

Respondent

Counsel appearing  
for Plaintiff

No Appearance, Deputy  
District Attorney

Counsel appearing  
for Defendant

No Appearance

Nature of Proceedings: **EX PARTE PETITION FOR WRIT OF HABEAS CORPUS**

Case No. **136007B**  
PFN: **AYA853**  
CEN: **9228736**

The defendant is not present.

The Court having reviewed the defendant's Petition for Writ of Habeas Corpus filed on March 07, 2007 orders said Petition

Please find enclosed an endorsed filed copy of Order Denying Petition For Writ Of Habeas Corpus.

**CLERK'S CERTIFICATE OF MAILING (CCP 1013a)**


I certify that the following is true and correct: I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1225 Fallon Street, Oakland, California. I served this EX PARTE PETITION FOR WRIT OF HABEAS CORPUS by placing a copy in an envelope addressed to: Dameon Franklin and then by sealing and placing it for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Oakland, California, following standard court practices.

Dameon Franklin  
CDC or ID No: T-29665/AYA853  
California State Prison – Los Angeles County  
44750 60<sup>th</sup> St. West  
Lancaster, CA 93536

Date: 04/30/07

Executive Officer/Clerk of the Superior Court

By

  
Danielle Labrecque, Deputy Clerk

**E X H I B I T #3**

**ABSTRACT OF JUDGEMENT**



(RCD-03/22/01)

AI ACT OF JUDGMENT - PRISON COMMITMENT TERMINATE  
[NO. VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED]

CR-290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA BRANCH OR JUDICIAL DISTRICT: <b>Rene C. Davidson</b>		000305	
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: <b>DAMEON FRANKLIN</b>		DOB: <b>02-28-78</b>	136007B -A
AKA: CII#: BOOKING # (PFN and CEN) <b>AYA853/9228736</b>		FILED ALAMEDA COUNTY SEP 07 2001	
<input type="checkbox"/> NOT PRESENT		CLERK OF THE SUPERIOR COURT	
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT		By <u>Juanita Moore</u> Deputy	
DATE OF HEARING <b>09-07-01</b>	DEPT. NO. <b>02</b>	JUDGE <b>ROBERT B. FREEDMAN</b>	
CLERK <b>JUANITA MOORE</b>	REPORTER <b>KAREN ROBERSON</b>	PROBATION NO. OR PROBATION OFFICER <b>FRANK TAPIA</b>	
COUNSEL FOR PEOPLE <input checked="" type="checkbox"/> Deputy District Attorney <input type="checkbox"/> State Attorney General <b>DANIELLE HILTON</b>		COUNSEL FOR DEFENDANT <input type="checkbox"/> Deputy Public Defender <input checked="" type="checkbox"/> Private Counsel <b>THOMAS BROOME</b>	

1. Defendant was convicted of the commission of the following felonies:

- ☐ Additional counts are listed on attachment  
 \_\_\_\_ (number of pages attached)

☐ Additional counts are listed on attachment  
 \_\_\_\_ (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			TERM L,M,U	Concur.	Consec 1/3 Violent	Consec 1/3 NON Violent	Consec Full Term	Incom- plete sentence Refer 5	554 Stay	Principal or Consecutive Time Imposed	
						JT	CT	plea								YRS.	MOS.
01	PC	261(a)(2)/264.1	RAPE W/CONCERT	1999	09-07-01	X			U							9	0
02	PC	261(a)(2)/264.1	RAPE W/CONCERT	1999	09-07-01	X			U				X			9	0
03	PC	288(a)(d)	ORAL COPULATION	1999	09-07-01	X			M	X						7	0
04	PC	288(a)(d)	ORAL COPULATION	1999	09-07-01	X			M	X						7	0
					- -												

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTION OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST enhancements stricken under PC 1385.

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL

4. ☐ Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).

5. INCOMPLETED SENTENCE(S) CONSECUTIVE

6. TOTAL TIME ON ATTACHED PAGES:

7. ☐ Additional indeterminate term (see CR-292).

8. TOTAL TIME:

18 0

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.  
 Form Adopted by the Judicial Council of California  
 CR -290 (Rev. January 1, 1999)

ABSTRACT OF JUDGMENT - PRISON COMMITMENT - DETERMINATE  
 [NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED]

Penal Code §§ 1213, 1213.5

000306

PEOPLE OF THE STATE OF CALIFORNIA vs.  
DEFENDANT: **FRANKLIN, DAMEON****136007B****-A****-B****-C****-D**

## 9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

- a. RESTITUTION FINE of: **\$800.00** per PC 1202.4(b) forthwith per PC 2085.5.
- b. RESTITUTION FINE of: **\$800.00** per PC 1202.45 suspended unless parole is revoked.
- c. RESTITUTION of: **\$960.25 + 1580.00** per PC 1202.4(f) to ☐ victim(s)\* ☐ Restitution Fund  
 (\*List victim name(s) if known and amount breakdown in item 11, below.)
- (1) ☐ Amount to be determined.
- (2) ☐ Interest rate of: \_\_\_% (not to exceed 10% per PC 1204.4(f)(3)(F)).
- d. ☐ LAB FEE of: \$\_\_\_\_\_ for counts: \_\_\_\_\_ per H&SC 11372.5(a).
- e. ☐ DRUG PROGRAM FEE of \$150 per H&SC 11372.7(a).
- f. ☒ FINE of **\$100** per PC 1202.5.

## 10. TESTING

- a. ☐ AIDS pursuant to ☐ PC 1202.1 ☐ other (specify):
- b. ☒ DNA pursuant to ☐ PC 290.2 ☒ PC 296 ☐ other (specify):

## 11. Other orders (specify):

Defendant to submit to Hiv Testing.

Defendant to register pursuant to 290 Penal Code.

Defendant liable for victim restitution jointly and separately.

Restitution reserved as to further bills.

Defendant advise of appeal rights.

## 12. Execution of sentence imposed

- a. ☒ at initial sentencing hearing.
- b. ☐ at resentencing per decision on appeal.
- c. ☐ after revocation of probation.
- d. ☐ at resentencing per recall of commitment. (PC 1170(d).)
- e. ☐ other (specify):

## 13. CREDIT FOR TIME SERVED

CASE NUMBER	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
<b>136007b</b> -A	<b>1071</b>	<b>931</b>	<b>140</b> <input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
-B			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
-C			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
-D			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
DATE SENTENCE PRONOUNCED: <b>09-07-01</b>	SERVED TIME IN STATE INSTITUTION: <input type="checkbox"/> DMH <input type="checkbox"/> CDC <input type="checkbox"/> CRC		

14. Defendant is remanded to the custody of the sheriff: ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.
- To be delivered to: ☐ reception center designated by Director, California Department of Corrections: ☒ San Quentin ☐ Chowchilla
- ☐ Other:

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE

DATE

**09-07-01**

**E X H I B I T #4**

**TRANSCRIPT OF SENTENCE**

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA  
BEFORE THE HONORABLE ROBERT B. FREEDMAN, JUDGE  
DEPARTMENT 2

FILED  
ALAMEDA COUNTY

SEP 10 2001

CLERK OF THE SUPERIOR COURT  
By Winey Hernandez DEPUTY

PEOPLE OF THE STATE OF )  
CALIFORNIA, )  
PLAINTIFF, )  
VS. )  
STACY LYTLE, )  
DAMEON RAY FRANKLIN AND )  
SHAWNTE DARNELL GULLEDGE, )  
DEFENDANTS. )

ORIGINAL

NO. 136007A  
136007B  
136665

PROCEEDINGS ON SENTENCE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

FRIDAY, SEPTEMBER 7, 2001

APPEARANCES:

FOR THE PLAINTIFF:

THOMAS J. ORLOFF  
DISTRICT ATTORNEY  
BY: DANIELLE HILTON  
DEPUTY DISTRICT ATTORNEY  
COUNTY OF ALAMEDA  
900 COURTHOUSE  
1225 FALLON STREET  
OAKLAND, CA. 94619

FOR MR. LYTLE:

RICHARD E. HOVE, ESQ.  
ATTORNEY AT LAW  
24072 MYRTLE STREET  
HAYWARD, CALIFORNIA

FOR MR. FRANKLIN:

THOMAS J. BROOME, ESQ.  
ATTORNEY AT LAW  
1330 BROADWAY

FOR MR. GULLEDGE:

OAKLAND, CALIFORNIA 94612  
JOHN R. MC DOUGALL, ESQ.  
ATTORNEY AT LAW  
2041 BANCROFT AVENUE  
BERKELEY, CALIFORNIA

P-R-O-C-E-E-D-I-N-G-S

\* \* \*

FRIDAY, SEPTEMBER 7, 2001

\* \* \*

THE COURT: THANK YOU. GOOD MORNING.

WE ARE ON THE RECORD IN THE CONSOLIDATED  
MATTERS OF THE PEOPLE VERSUS LYTLE, FRANKLIN AND  
GULLEDGE. EACH OF THE THREE DEFENDANTS, WHO ARE IN  
CUSTODY, ARE PRESENT; ALL COUNSEL ARE PRESENT.

I'M GOING TO FIRST ACKNOWLEDGE RECEIPT OF  
MS. DOE'S, THE VICTIM'S, IMPACT STATEMENT. I  
APPRECIATE IT. IT'S HEARTFELT AND WELL-EXPRESSED; AND  
THE COURT CERTAINLY IS GOING TO TAKE THESE THOUGHTS  
INTO CONSIDERATION. MY UNDERSTANDING IS THAT MS. DOE  
DOES NOT WISH TO VERBALLY ADDRESS THE COURT; BUT I'M  
RECEIVING THE IMPACT STATEMENT IN LIEU OF ANY ORAL  
STATEMENT.

THE MATTER WAS CONTINUED UNTIL TODAY FROM THE  
EARLIER REPORT AND SENTENCING DATE FOR TWO REASONS, AT  
LEAST, IN THE COURT'S MIND:

ONE WAS THAT MR. BROOME, ON BEHALF OF  
MR. FRANKLIN, HAD FILED A MOTION FOR NEW TRIAL;  
MS. HILTON WISHED AN OPPORTUNITY TO RESPOND TO THE  
WRITTEN MOTION. THE COURT, ON THAT OCCASION, MADE SOME  
COMMENTS ABOUT THE COURT'S IMPRESSIONS INCLUDING  
BRINGING TO THE ATTENTION OF COUNSEL AN AUTHORITY,  
PEOPLE VERSUS MCCOY, WHICH HAD NOT BEEN TAKEN INTO  
ACCOUNT IN MR. BROOME'S BRIEFING.



000309

1 THE COURT TODAY RECEIVED A WRITTEN MEMORANDUM  
2 IN OPPOSITION ON BEHALF OF THE PEOPLE TO THE MOTION FOR  
3 NEW TRIAL.

4 MR. BROOME, YOU'VE HAD AN OPPORTUNITY TO READ  
5 THAT, I TAKE IT?

6 MR. BROOME: YES. I RECEIVED IT THIS MORNING  
7 --

8 THE COURT: ALL RIGHT.

9 MR. BROOME: -- AND READ IT.

10 THE COURT: A SECOND REASON TO CONTINUE THIS  
11 MATTER WAS THE ABSENCE OF MR. HOVE ON THE PRIOR  
12 SENTENCING OCCASION. ON THAT DATE, MR. HOVE DID NOT  
13 APPEAR, NOTWITHSTANDING HIS FAILURE TO COMMUNICATE WITH  
14 THE COURT PRIOR TO THE MORNING OF THE SENTENCING  
15 HEARING WHICH WAS AUGUST 23RD.

16 THE COURT RECEIVED A TELEPHONE MESSAGE WHICH  
17 WAS TIME STAMPED, SO TO SPEAK, AT 9:04 ON THE MORNING  
18 OF AUGUST 23RD; AND ACTUALLY WAS RECEIVED BY THE CLERK  
19 OF A DIFFERENT DEPARTMENT RATHER THAN THIS DEPARTMENT  
20 INDICATING THAT MR. HOVE WAS OTHERWISE ENGAGED IN TRIAL  
21 IN JUDGE HASHIMOTO'S DEPARTMENT IN HAYWARD.

22 I CORRESPONDED OR COMMUNICATED WITH JUDGE  
23 HASHIMOTO ON THAT OCCASION TO INQUIRE ABOUT MR. HOVE'S  
24 CIRCUMSTANCES AND WHETHER MR. HOVE HAD EVER ASKED JUDGE  
25 HASHIMOTO WHETHER HE COULD BE EXCUSED FROM THAT TRIAL  
26 TO BE PRESENT HERE; AND JUDGE HASHIMOTO INFORMED ME  
27 THAT NO SUCH REQUEST HAD BEEN MADE.

28 I INDICATED TO MR. BROOME, WHO WAS, AS IT

000323

4

1 WERE, STANDING IN FOR MR. HOVE ON THE 23RD, TO INFORM  
2 MR. HOVE THAT IT WAS IMPERATIVE THAT HE BE HERE, AND  
3 THE COURT WOULD CONSIDER SANCTIONS AGAINST MR. HOVE FOR  
4 HIS FAILURE TO APPEAR, INCLUDING SANCTIONS IN THE  
5 NATURE OF COMPENSATING THE VICTIM FOR ANY ADDITIONAL  
6 LOSS OF INCOME OR EXPENSES INCURRED NECESSITATED BY  
7 MR. HOVE'S ABSENCE AND REQUIREMENT TO APPEAR ON A  
8 SECOND OCCASION.

9 I'LL NOTE, EVEN THOUGH THE MATTER WAS  
10 CONTINUED FOR THE PURPOSE OF PERMITTING BRIEFING AND  
11 ARGUMENT ON THE MOTION FOR NEW TRIAL, THAT ALONE WOULD  
12 NOT HAVE REQUIRED THE -- CREATED THE OCCASION FOR THE  
13 VICTIM, HER FAMILY MEMBERS AND SUPPORT PERSONS TO  
14 RETURN TO COURT ON YET ANOTHER OCCASION.

15 SO, WE'LL RETURN TO THAT POINT -- TO THOSE  
16 ISSUES AT AN APPROPRIATE POINT IN TIME.

17 LET'S HEAR FIRST ANY ARGUMENT ON THE MOTION  
18 FOR NEW TRIAL TO AUGMENT THE WRITTEN MATERIAL SUBMITTED  
19 BOTH IN SUPPORT OF AND IN OPPOSITION TO THE MOTION.

20 MR. BROOME, WOULD YOU LIKE TO BE HEARD?

21 MR. BROOME: YES, YOUR HONOR.

22 THE COURT CITED PEOPLE VERSUS MCCOY 25 CAL.  
23 4TH 1111, AND THAT WAS REITERATED IN THE BRIEF OF THE  
24 DISTRICT ATTORNEY IN THIS MATTER. THE COURT INDICATED  
25 THAT IT DISTINGUISHED THE CASE OF ALLSIP, UPON WHICH WE  
26 RELIED IN OUR MOTION FOR A NEW TRIAL.

27 OF COURSE, I HAVE SINCE READ THAT CASE AND  
28 RESPECTFULLY DISAGREE. MCCOY WAS A DRIVE-BY SHOOTING

000321

5

1 CASE IN WHICH MCCOY WAS THE SHOOTER, MCCOY BEING THE  
2 FELLOW WHO WAS MOVING FOR A NEW TRIAL, AND HE FIRED  
3 SHOTS AT THE VICTIMS AS WELL AS DID THE CO-DEFENDANT,  
4 WHO INFLICTED THE FATAL WOUNDS. AND THAT'S VERY  
5 IMPORTANT IN DISTINGUISHING ASPECTS OF THESE TWO CASES.

6 THE DEFENDANT THERE, MCCOY, ARGUED THAT AN  
7 AIDER AND ABETTOR COULD NOT BE FOUND GUILTY OF A  
8 GREATER OFFENSE THAN THE ACTUAL PERPETRATOR -- AS WE  
9 ARE, OF COURSE.

10 THE COURT REVERSED -- MEANING THE COURT OF  
11 APPEALS -- THE DEFENDANT'S CASE; BUT THAT REVERSAL WAS  
12 DONE DUE TO INSTRUCTIONAL ERROR; HAD NOTHING TO DO WITH  
13 THE UNDERLYING FACTS OF THE CASE; IT WAS INSTRUCTIONS  
14 OF THE COURT.

15 THE COURT OBSERVED BOTH DEFENDANTS WERE  
16 ACTUAL PERPETRATORS -- ANOTHER VERY IMPORTANT ASPECT  
17 DISTINGUISHING BETWEEN MCCOY AND ALLSIP -- AND THE  
18 COURT FOUND BOTH EQUALLY RESPONSIBLE NOT JUST AS AIDERS  
19 AND ABETTORS BUT ACTUALLY AS ACTUAL PERPETRATORS  
20 BECAUSE MCCOY SHOT AND POSSIBLY HIT -- WASN'T CLEAR ON  
21 THAT -- THE VICTIM HIMSELF. THE KEY FACTOR THERE BEING  
22 THAT THE COURT SIMPLY HELD IN MCCOY THAT HE COULD BE  
23 LIABLE BOTH AS A PERPETRATOR AS WELL AS AN AIDER AND  
24 ABETTOR; AND THE JURY COULD HAVE SO FOUND.

25 AND FURTHER, ANOTHER POINT OF SIGNIFICANT  
26 DISTINCTION BETWEEN MCCOY AND ALLSIP IS THE COURT HELD  
27 THAT ONCE THE SECOND DEFENDANT ACTED WITH THE NECESSARY  
28 MENTAL STATE OF AN AIDER AND ABETTOR, THE JURY COULD

000312 6

1 FIND HIM LIABLE ON BOTH BASES; THEREFORE, THERE'S A  
2 CLEAR DIFFERENCE BECAUSE OF THE FACT THAT HE COULD BE  
3 LIABLE ON HIS OWN ACTIONS AS WELL AS AS AN AIDER AND  
4 ABETTOR.

5 FURTHER, THERE WAS A DISTINCTION IN THE  
6 DEFENSE AS IT APPLIED IN MCCOY BECAUSE, IN EFFECT, WHAT  
7 WAS HAPPENING IN MCCOY WAS THAT THE NUMBER ONE  
8 DEFENDANT IN THAT INSTANCE ACTUALLY HAD AN UNREASONABLE  
9 SELF-DEFENSE DEFENSE WHICH DID NOT APPLY TO MR. MCCOY,  
10 AND THAT WAS EVEN FURTHER REASON WHY, IN FACT, THAT MAY  
11 HAVE BEEN A DISTINCTION AS TO HOW HE WAS FOUND WITH  
12 REGARD TO THE JURY -- BUT I DON'T BELIEVE SO; I THINK  
13 IT HAD TO DO SOLELY WITH THE INSTRUCTIONAL ERROR.

14 FINALLY, THE COURT DID REFER TO ALLSIP; BUT  
15 IN SO DOING, IT WAS INTERESTING TO NOTE THAT THE COURT  
16 WAS VERY CLEAR THAT PEOPLE VERSUS ALLSIP DID NOT  
17 PRESENT THE QUESTION BEING CONSIDERED IN MCCOY, TO WIT:  
18 "A DEFENSE PERSONAL TO THE ACTUAL PERPETRATOR." THAT'S  
19 IN MCCOY, PAGE 1120, AND FURTHER NOTED IN FOOTNOTE 3,  
20 PAGE 1122:

21 "BECAUSE WE CANNOT ANTICIPATE ALL  
22 POSSIBLE NON-HOMICIDE CIRCUMSTANCES OR  
23 CRIMES -- CRIMES OR CIRCUMSTANCES, WE  
24 EXPRESS NO VIEW ON WHETHER OR HOW THESE  
25 PRINCIPLES MAY APPLY OUTSIDE THE  
26 HOMICIDE CONTEXT."

27 SO, THE COURT WAS INDICATING -- IT GAVE NO  
28 VIEW IN ITS RULING AS TO HOW THESE PRINCIPLES WOULD



000313

7

1 APPLY TO ANY CASE OTHER THAN A HOMICIDE CASE, WHICH  
2 MCCOY WAS, WHICH THIS CASE IS NOT.

3 ALSO, IN ITS DISTINGUISHING OF ALLSIP, ONLY  
4 IN ITS CONCLUSION, THE COURT OBSERVED: "WE ALSO  
5 DISAPPROVE ANY INTERPRETATION OF" -- GAVE SEVERAL  
6 CASES, PEOPLE VERSUS ALLSIP BEING ONE -- "THAT IS  
7 INCONSISTENT WITH THIS OPINION," AND NOTHING MORE.

8 SO, I THINK, TO THAT EXTENT, REALISTICALLY  
9 ALLSIP IS NOT AFFECTED AT ALL AS IT APPLIES TO THIS  
10 CASE OF DAMEON FRANKLIN WITH REGARD TO ITS PREVIOUS  
11 HOLDINGS AS TO WHETHER OR NOT MR. FRANKLIN CAN BE AN  
12 AIDER AND ABETTOR BASED ON THE FACTS OF THIS CASE.

13 THE COURT: LET ME ASK THIS QUESTION,  
14 MR. BROOME, BEFORE MS. HILTON HAS AN OPPORTUNITY TO  
15 RESPOND.

16 I'LL ALSO NOTE FOR THE RECORD THAT ON AUGUST  
17 23RD, I BELIEVE MR. MC DOUGALL INDICATED ON THE RECORD  
18 HE WISHED TO JOIN IN THE MOTION FOR NEW TRIAL.

19 MR. MC DOUGALL: YES, YOUR HONOR.

20 THE COURT: CERTAINLY, I'LL GIVE YOU THE  
21 OPPORTUNITY TO ARGUE ON BEHALF OF MR. GULLEDGE.

22 I DON'T DISAGREE WITH YOU, MR. BROOME, TO THE  
23 EXTENT THAT THE OPINION IN MCCOY IS FULLY DISPOSITIVE  
24 OF THE ISSUE. BUT IT -- CERTAINLY, SUBSEQUENT  
25 AUTHORITY THAT IMPAIRS THE LOGIC OR RATIONALE EVEN ON  
26 THE FACTUAL SETTING, THAT WAS VERY DIFFERENT.

27 HOWEVER, THERE IS A CRITICAL POINT WHICH IS  
28 ADDRESSED BY THE PEOPLE'S MEMORANDUM WHICH IS NOT



1 ACKNOWLEDGED OR ADDRESSED IN YOUR WRITTEN  
2 COMMENTS, TO THE BEST OF MY UNDERSTANDING, AND THAT IS:  
3 MR. LYTLE, UNLIKE THE CO-DEFENDANTS IN ALLSIP,  
4 TO WHICH WE HAVE BOTH REFERRED, HAS NOT  
5 THE JURY HUNG.

6 MR. BROOME: I DID ANALOGIZE  
7 INITIAL BRIEF. I DID POINT THAT OUT AND  
8 THAT; ANALOGIZED IT TO A SIMILAR-TYPE CIRCUMSTANCE.

9 THE COURT: ALL RIGHT. MS. HILTON

10 MS. HILTON: YOUR HONOR, I BELIEVE THAT THAT  
11 IS THE ESSENTIAL DIFFERENCE. SINCE THERE IS  
12 ACQUITTAL, AS I STATED IN MY BRIEF, AN ACQUITTAL NOT  
13 TANTAMOUNT -- USING MR. BROOME'S WORDS -- A HUNG JURY IS  
14 NOT TANTAMOUNT TO AN ACQUITTAL.

15 MR. LYTLE CAN AND MAY BE TRIED  
16 OF THE 261 IN CONCERT; SO THAT EQUALS  
17 DIFFERENCE AND FAILS ON MR. BROOME'S

18 MR. BROOME: IF I MAY RESPOND.

19 THE COURT: YES.

20 MR. BROOMS: I THINK THE KEY  
21 ALTHOUGH NOT THE MAGIC WORDS OF ACQUITTAL, THE KEY  
22 ASPECT IN ALLSIP IS A JOINT TRIAL BASED ON THE SAME  
23 FACTS. THAT'S WHY THE ANALOGY APPLIES.

24 THE COURT: I UNDERSTAND THE ARGUMENT.

25 MR. MC DOUGALL, DO YOU WISH TO  
26 REGARD TO MR. GULLEDGE'S POSITION?

27 MR. MC DOUGALL: YOUR HONOR,

28 MR. BROOME'S ARGUMENT BY REFERENCE AND SUBMIT IT.

000315 9

1 THE COURT: ALL RIGHT. MS. HILTON, DO YOU  
2 WISH TO RECIPROCATE?

3 MS. HILTON: NO, YOUR HONOR.

4 THE COURT: IS THE MATTER THEN SUBMITTED WITH  
5 REGARD TO THE MOTION FOR NEW TRIAL?

6 MR. BROOM: YES.

7 THE COURT: MS. HILTON?

8 MS. HILTON: SUBMITTED.

9 THE COURT: THE COURT IS GOING TO AND DOES  
10 DENY THE MOTION FOR NEW TRIAL FOR THE REASONS EXPRESSED  
11 ON THE RECORD ON THE PRIOR -- ON AUGUST 23RD AND TODAY.

12 I DO AGREE WITH THE PEOPLE'S ANALYSIS AS TO  
13 WHY ALLSIP AND THE OTHER AUTHORITIES RELIED UPON BY THE  
14 MOVING PARTIES DO NOT MANDATE THE COURT TO GRANT THE  
15 MOTION. MR. LYTLE HAS NOT BEEN ACQUITTED. THE  
16 CIRCUMSTANCES WOULD BE THE SAME IF THERE WERE A  
17 SEPARATE TRIAL OF TWO OR MORE OF THE THREE -- OR ONE OR  
18 MORE OF THE THREE CO-DEFENDANTS.

19 THE MOTION IS DENIED BOTH AS TO MR. FRANKLIN  
20 AND AS TO MR. GULLEDGE.

21 TURNING NOW TO A SENTENCING ITSELF WITH  
22 REGARD TO -- AND WE'LL BEGIN WITH MR. GULLEDGE.

23 IS THERE ANY LEGAL CAUSE WHY SENTENCE SHOULD  
24 NOT BE IMPOSED AT THIS POINT, MR. MC DOUGALL?

25 MR. MC DOUGALL: NO LEGAL CAUSE, YOUR HONOR.

26 THE COURT: IS THERE ANYTHING THAT YOU WISH  
27 THE COURT TO HEAR WITH REGARD TO MR. GULLEDGE'S  
28 PARTICIPATION -- LET ME BACK UP A STEP BEFORE I ASK FOR

000315

10

1 THAT, BECAUSE I SHOULD INDICATE FOR THE RECORD WHAT THE  
2 COURT'S TENTATIVE INCLINATION IS WITH REGARD TO  
3 DISPOSITION BY WAY OF SENTENCING AS TO MR. GULLEDGE.

4 IN THAT REGARD, I HAVE READ AND CONSIDERED  
5 THE PROBATION DEPARTMENT REPORT WITH REGARD TO  
6 MR. GULLEDGE; I'VE READ AND CONSIDERED THE LETTER FROM  
7 THE PEOPLE. OF COURSE, I PRESIDED AT THE TRIAL AND  
8 HAVE DIRECTLY RECEIVED THE EVIDENCE WHICH SUPPORTS THE  
9 VERDICT. I HAD THE OPPORTUNITY TO OBSERVE MR. GULLEDGE  
10 IN THE COURTROOM OVER AN EXTENDED PERIOD OF TIME.

11 I DO AGREE, IN SUBSTANCE, WITH THE PEOPLE'S  
12 ANALYSIS OF THE SENTENCING ALTERNATIVES AVAILABLE IN  
13 THIS MATTER.

14 I'VE ALSO READ MR. MC DOUGALL'S VERY THOROUGH  
15 LETTER WITH REGARD TO HIS POSITION REGARDING A  
16 SENTENCING; AND I AM PREPARED TO IMPOSE THE TERM  
17 RECOMMENDED OR REQUESTED BY THE PEOPLE -- ALTHOUGH THE  
18 COURT MIGHT HAVE CONSIDERED EVEN A GREATER TERM THAN  
19 THAT REQUESTED BY THE PEOPLE -- AND THAT IS:

20 AS TO COUNT I, THE AGGRAVATED TERM OF NINE  
21 YEARS; AS TO COUNT II, THE AGGRAVATED TERM OF NINE  
22 YEARS TO BE SERVED CONSECUTIVELY; AS TO COUNT III, THE  
23 MIDTERM OF SEVEN YEARS; AND AS TO COUNT IV, THE MIDTERM  
24 OF SEVEN YEARS; THE TERMS AS TO COUNTS III AND IV TO BE  
25 SERVED CONCURRENTLY.

26 SO, THE TOTAL TIME FOR MR. GULLEDGE UNDER  
27 THESE CIRCUMSTANCES WOULD BE 18 YEARS IN STATE PRISON  
28 TO BE SERVED AT 85% TIME.

000317

11

1 WE DID A COMPUTATION ON THE 23RD AS TO THE  
2 NUMBER OF DAYS CREDIT TO WHICH MR. GULLEDGE WOULD BE  
3 ENTITLED; AND AFTER I HEAR COMMENTS AND WHEN THE COURT  
4 IS PREPARED TO CONFIRM OR MODIFY OR ACTUALLY IMPOSED  
5 SENTENCE, I'LL ASK THE DEPUTY TO GIVE US AN UPDATE AS  
6 TO THE NUMBER OF DAYS ACTUAL CREDIT THAT MR. GULLEDGE  
7 MAY BE ENTITLED.

8 I THINK THE PEOPLE'S ANALYSIS OF THE  
9 SENTENCING FACTORS ARE ACCURATE. I OBSERVED IN  
10 MR. GULLEDGE'S, AS WELL, A PARTICULAR LEVEL OF  
11 CALLOUSNESS AND LACK OF REMORSE ABOUT HIS PARTICIPATION  
12 IN THE MATTER.

13 ON THE OTHER SIDE OF THE WEIGHING OF  
14 SENTENCING FACTORS, I DO ACKNOWLEDGE THAT MR. GULLEDGE  
15 WAS QUITE YOUNG AT THE TIME OF THE OFFENSE AND QUITE  
16 YOUNG NOW. HAD HE BEEN PROSECUTED AS A JUVENILE, HIS  
17 EXPOSURE WOULD BE LESS. BUT HE TOOK ON THE ADVENTURE  
18 OF AN ADULT AND HE IS GOING TO TAKE ON THE CONSEQUENCES  
19 THAT WOULD BE VISITED UPON AN ADULT FOR WHAT CAN ONLY  
20 BE DESCRIBED AS TRULY REPREHENSIBLE CONDUCT ON HIS  
21 PART.

22 WITH REGARD TO THE OTHER TERMS AND CONDITIONS  
23 OF SENTENCING, WITH REGARD TO THE RECOMMENDATIONS OF  
24 THE PROBATION DEPARTMENT PERTAINING TO MR. GULLEDGE, I  
25 WOULD BE PREPARED TO IMPOSE A RESTITUTION FINE IN THE  
26 AMOUNT OF \$800 PURSUANT TO PENAL CODE SECTION  
27 1202.4(B); AN EQUIVALENT ADDITIONAL RESTITUTION FINE,  
28 THAT IS TO SAY, IN THE SUM OF \$800.00 AS WELL, PURSUANT

000323

12

1 TO PENAL CODE SECTION 1202.45, THAT AMOUNT TO BE STAYED  
2 PENDING SUCCESSFUL COMPLETION OF PAROLE WHEN AND IF  
3 MR. GULLEDGE BECOMES ELIGIBLE FOR PAROLE.

4 I WILL ALSO ORDER RESTITUTION AS TO ALL OF  
5 THE THREE DEFENDANTS TO BE A JOINT AND SEVERAL  
6 LIABILITY, AND I'LL COME BACK TO VERIFYING THE AMOUNT;  
7 AND WILL ALSO CONTEMPLATE IMPOSING AN ORDER THAT THE  
8 COURT WILL RETAIN CONTINUING JURISDICTION ON THE ISSUE  
9 OF RESTITUTION IF THERE IS PROOF OF ADDITIONAL SUMS TO  
10 WHICH THE VICTIM OR THE VICTIMS' COMPENSATION BOARD  
11 BECOME ENTITLED AS A RESULT OF THE ACTS AND OMISSIONS  
12 OF THESE DEFENDANTS.

13 MR. GULLEDGE WOULD, UNDER THE COURT'S  
14 CONTEMPLATED SENTENCE, ALSO BE REQUIRED TO REGISTER  
15 PURSUANT TO THE PROVISIONS OF PENAL CODE SECTION 290;

16 IF HE HAS NOT FULLY COMPLIED THEREWITH, TO  
17 PROVIDE DNA, BLOOD AND SALIVA SAMPLES PURSUANT TO PENAL  
18 CODE SECTION 296;

19 AND AS REQUESTED BY THE PROBATION DEPARTMENT,  
20 TO PAY A PROBATION INVESTIGATION FEE OF \$100.00  
21 PURSUANT TO PENAL CODE SECTION 1203.1(B).

22 THAT IS WHAT THE COURT CONTEMPLATES WITH  
23 REGARD TO MR. GULLEDGE. I'LL ENTERTAIN COMMENTS FROM  
24 THE PEOPLE AND THEN FROM MR. MC DOUGALL.

25 MS. HILTON?

26 MS. HILTON: YOUR HONOR, THE ONLY THING THAT  
27 I WOULD ADD IS I'D ASK THAT THE COURT ORDER AN H.I.V.  
28 TEST RESULT TO BE GIVEN TO THE VICTIM.

55



000319

13

1 THE COURT: ALL RIGHT. THE COURT IS PREPARED  
2 TO DO THAT, AS WELL.

3 ALL RIGHT. MR. MC DOUGALL?

4 MR. MC DOUGALL: WELL, YOUR HONOR, I ARGUED  
5 IN MY SENTENCING LETTER THAT THESE EVENTS -- THESE  
6 CRIMES ARE -- LEGALLY HAPPENED ON THE SAME OCCASION.

7 I BELIEVE THE COURT IS MAKING AN ERROR IN  
8 REJECTING THAT ANALYSIS AND FINDING THEY'RE SEPARATE  
9 OCCASIONS AND IMPOSING CONSECUTIVE TERMS.

10 PURSUANT TO 16.6(D), I THINK THE PROPER TERMS  
11 ARE THE MIDTERMS; AND THE AGGRAVATING AND MITIGATING  
12 FACTORS WOULD BALANCE EACH OTHER; AND THE COURT SHOULD  
13 CHOOSE THE MIDTERM INSTEAD OF THE AGGRAVATED TERM.

14 THE COURT: MS. HILTON, ANY COMMENT ON THAT  
15 ISSUE?

16 MS. HILTON: NO, YOUR HONOR. SUBMITTED.

17 THE COURT: THE RECORD SHOULD INDICATE THAT I  
18 DID FULLY CONSIDER YOUR ARGUMENT, WHICH I THOUGHT WAS  
19 WELL VERBALIZED AND EXPRESSED, MR. MC DOUGALL; BUT THE  
20 COURT IS PERSUADED BY THE EVIDENCE THAT THERE WAS AN  
21 OPPORTUNITY, EVEN THOUGH BRIEF IN HISTORICAL TIME, TO  
22 REFLECT AND CONSIDER WHETHER MR. GULLEDGE WAS GOING TO  
23 ENGAGE IN SUCCESSIVE ACTS OR NOT. THIS IS NOT AN EVENT  
24 WHICH OCCURRED IN AN INSTANT OF TIME AS A RESULT OF  
25 SOME PROVOCATION WHERE THERE WAS A LACK OF OPPORTUNITY  
26 TO REFLECT.

27 THE COURT HAS CONSIDERED THE FACT THAT  
28 MR. GULLEDGE, AS DID OTHER PARTICIPANTS, MAY HAVE BEEN

000320

1 UNDER THE INFLUENCE OF ALCOHOL TO SOME EXTENT AT THE  
2 TIME; BUT THAT'S NO EXCUSE FOR ANYONE, LET ALONE ANY  
3 ADDITIONAL ACT THAT WAS ENGAGED IN BY MR. GULLEDGE.  
4 AND I DO THINK, UNDER THESE CIRCUMSTANCES, THAT THE  
5 AGGRAVATED TERM IS APPROPRIATE.

6 AS I INDICATED VERY BRIEFLY A MOMENT AGO, THE  
7 COURT COULD HAVE FOUND CIRCUMSTANCES THAT WOULD HAVE  
8 JUSTIFIED AN EVEN GREATER SENTENCE FOR MR. GULLEDGE. I  
9 DON'T MEAN TO SUGGEST 18 YEARS IS NOT A VERY  
10 SUBSTANTIAL TIME IN PRISON, PARTICULARLY FOR A YOUNG  
11 MAN OF MR. GULLEDGE'S AGE; BUT I DO THINK IT IS  
12 APPROPRIATE, GIVEN THE HEINOUS CIRCUMSTANCES OF THIS  
13 CRIME.

14 IS THE MATTER THEN SUBMITTED?

15 MR. MC DOUGALL: SUBMITTED, YOUR HONOR.

16 THE COURT: THAT WILL BE THE COURT'S SENTENCE  
17 WITH REGARD TO MR. GULLEDGE, WITH THE EXCEPTION OF THE  
18 QUANTIFICATION OF THE RESTITUTION CLAIM WHICH I'LL COME  
19 BACK TO AS TO EACH OF THE DEFENDANTS AFTER WE DEAL WITH  
20 THE OTHER SENTENCING ISSUES.

21 WE'LL TURN THEN TO MR. FRANKLIN'S SITUATION.

22 THE COURT, LIKEWISE, OF COURSE, WOULD APPLY  
23 ALL OF THE SAME COMMENTS AND TERMS OF THE SOURCES OF  
24 INFORMATION AVAILABLE CONCERNING MR. FRANKLIN; AND THE  
25 FACT IS THE COURT HAS CONSIDERED AGAIN, I DO THINK,  
26 THAT THE PROPOSED SENTENCE REQUESTED BY THE PEOPLE IS  
27 APPROPRIATE UNDER THE CIRCUMSTANCES, ALTHOUGH THE COURT  
28 COULD, I THINK, JUSTIFY EVEN A GREATER SENTENCE FOR

Actual  
sent.  
start

600321

1 MR. FRANKLIN, SPECIFICALLY, THE TERM PROPOSED AND THE  
2 TERM THE COURT WOULD CONTEMPLATE -- I NEED TO PAUSE FOR  
3 A MOMENT.

4 MR. BROOME, IS THERE ANY LEGAL REASON WHY  
5 SENTENCE SHOULD NOT BE IMPOSED?

6 MR. BROOME: NO LEGAL CAUSE.

7 THE COURT: ALL RIGHT. THANK YOU.

8 AS TO COUNT I, THE COURT WOULD CONTEMPLATE  
9 THE AGGRAVATED TERM OF NINE YEARS; AS TO COUNT II, THE  
10 AGGRAVATED TERM OF NINE YEARS TO BE SERVED  
11 CONSECUTIVELY; AS TO COUNT III, THE MIDTERM OF SEVEN  
12 YEARS; AS TO COUNT IV, THE MIDTERM OF SEVEN YEARS, EACH  
13 OF THOSE TERMS TO BE SERVED CONCURRENTLY, SO THAT  
14 MR. FRANKLIN WOULD SERVE 18 YEARS IN STATE PRISON  
15 COMPUTED AT 85% TIME.

16 THE COURT WILL ALSO GIVE MR. FRANKLIN CREDIT  
17 FOR TIME SERVED TO BE CALCULATED IN A FEW MINUTES TIME  
18 FROM NOW.

19 ALTHOUGH THE PARTICIPATION OF EACH OF THE  
20 DEFENDANTS, OF COURSE, MUST BE AND SHOULD BE EVALUATED  
21 SEPARATELY, I THINK, WITHOUT REPEATING IN HAEC VERBA  
22 ALL OF THE COMMENTS I MADE WITH REGARD TO MR. GULLEDGE,  
23 THE SAME WOULD APPLY AS TO MR. FRANKLIN.

24 MR. FRANKLIN, ALSO, IS SUBSTANTIALLY OLDER;  
25 HE HAD THE OPPORTUNITY FOR REFLECTION THAT MATURITY  
26 THEORETICALLY WOULD BRING. MR. FRANKLIN GAVE AN  
27 IMPRESSION IN THE STATEMENT THAT HE GAVE TO THE POLICE,  
28 WHICH WAS RECEIVED IN EVIDENCE AT TRIAL, OF REMORSE.

000322

16

1 IT'S VERY DIFFICULT FOR THE COURT, IN RETROSPECTIVE  
2 VIEW OF THE ENTIRE TRIAL AND THE INFORMATION SUPPLIED  
3 FROM THE PROBATION DEPARTMENT REPORT, THAT THERE IS  
4 TRUE REMORSE AS DISTINGUISHED FROM REGRET THAT  
5 MR. FRANKLIN FINDS HIMSELF IN THIS SITUATION.

6 I ALSO ACKNOWLEDGE THE FACT THAT BUT FOR  
7 MR. FRANKLIN'S DISCLOSURE OF INFORMATION, NONE OF THE  
8 DEFENDANTS MIGHT HAVE BEEN -- MR. FRANKLIN HIMSELF --  
9 MIGHT HAVE BEEN APPREHENDED, AND THAT IS A FACTOR THE  
10 COURT CONSIDERS IN NOT IMPOSING A GREATER SENTENCE THAN  
11 THAT CONTEMPLATED.

12 THE CONSEQUENCES TO THE VICTIM OF THIS  
13 ACTION, IN CONCERT WITH MR. GULLEDGE AND MR. LYTLE, IS  
14 WELL-EXPRESSED IN MS. DOE'S LETTER. THE DEFENDANTS MAY  
15 BE OUT OF PRISON IN LESS THAN 18 YEARS; BUT THIS VICTIM  
16 WILL NOT BE FREE OF THE CONSEQUENCES OF THESE EVENTS IN  
17 18 OR 118 YEARS, I FEEL, NOTWITHSTANDING VERY MATURE  
18 AND REFLECTIVE REACTION TO THE PRESENT CIRCUMSTANCES.

19 THE COURT, LIKEWISE, CONTEMPLATES A  
20 RESTITUTION ORDER AS TO MR. FRANKLIN TO BE SHARED  
21 JOINTLY AND SEVERALLY WITH THE REMAINING DEFENDANTS.

22 WITH REGARD TO THE OTHER TERMS AND CONDITIONS  
23 AS REQUESTED OR PROPOSED BY THE PROBATION DEPARTMENT,  
24 THE COURT WOULD LIKEWISE IMPOSE A RESTITUTION FINE  
25 PURSUANT TO PENAL CODE SECTION 1202.4(B) THE SUM OF  
26 \$800; AN ADDITIONAL RESTITUTION FINE IN THE SAME  
27 AMOUNT, \$800, PURSUANT TO PENAL CODE SECTION 1202.45 TO  
28 BE STAYED PENDING SUCCESSFUL COMPLETION OF PAROLE,



000323

17

1 SHOULD MR. FRANKLIN BECOME ELIGIBLE FOR PAROLE;

2 THE RESERVATION OF JURISDICTION IN THE COURT  
3 OVER ADDITIONAL AND APPROPRIATE RESTITUTION CLAIMS WITH  
4 REGARD TO MR. FRANKLIN.

5 THE COURT WOULD LIKEWISE IMPOSE, IF HE HAS  
6 NOT HERETOFORE SUBMITTED SAMPLES OF BLOOD AND SALIVA,  
7 THAT HE DO SO PURSUANT TO PENAL CODE SECTION 296;

8 THAT HE SUBMIT TO AN H.I.V. TEST;

9 AND THAT HE REGISTER PURSUANT TO PENAL CODE  
10 SECTION 290.

11 FOR SOME REASON, THE PROBATION DEPARTMENT  
12 MAKES NO REFERENCE TO A PROBATION INVESTIGATION FEE  
13 WITH REGARD TO MR. FRANKLIN. I DON'T KNOW IF THAT'S AN  
14 OVERSIGHT OR NOT. BUT SINCE IT IS NOT REQUESTED OR  
15 PROPOSED IN THE PROBATION DEPARTMENT REPORT, I WOULD  
16 NOT IMPOSE IT UNDER THESE CIRCUMSTANCES.

17 MR. BROOME, DO YOU WISH TO BE HEARD?

18 MR. BROOME: YES, I DO.

19 I FIND IT DIFFICULT TO SEE HOW THE COURT  
20 COULD CONSIDER MR. FRANKLIN'S REMORSE TO BE NOT TRUE  
21 REMORE IN VIEW OF THE FACT THAT HE CAME FORTH  
22 VOLUNTARILY AND TALKED ABOUT THIS, AS I INDICATED IN MY  
23 BRIEF; AND FURTHERMORE, THAT HE EXPRESSED THAT CONCERN  
24 TO THE OFFICERS EVEN BEFORE THEY BEGAN THEIR  
25 INTERROGATION PROCESS AND CONTINUED TO EXPRESS THAT  
26 THROUGHOUT AND AT THE END. SO, I SIMPLY DISAGREE WITH  
27 THE COURT ON THAT.

28 AS FAR AS HIS RELATIVE AGE BEING GREATER TO



1 JUSTIFY HIS SENTENCE EQUAL TO THAT OF MORE INVOLVED  
2 PARTICIPANTS, I DON'T THINK THAT SHOULD BE SO IN THIS  
3 CASE BECAUSE OF THE FACT THAT HE WAS NOT SUBSTANTIALLY  
4 OLDER THAN THE OTHER DEFENDANTS.

5 SO, I WOULD SUBMIT IT WITH THAT.

6 THE COURT: ALL RIGHT. MR. BROOME, THERE'S  
7 AN INDIVIDUAL IN THE BACK OF THE COURTROOM WHO WAS, I  
8 BELIEVE, INDICATING TO THE COURT THAT SHE WISHED TO  
9 MAKE SOME COMMENTS.

10 MR. BROOME: YES, I THINK SHE DOES. THAT'S  
11 HIS MOTHER.

12 THE COURT: I'LL CERTAINLY ACCOMMODATE THEM.  
13 YOU CAN COME FORWARD, PLEASE.

14 GOOD MORNING. PLEASE TELL ME YOUR NAME.

15 MRS. FRANKLIN: I'M JUANITA FRANKLIN, DAMEON  
16 FRANKLIN'S ADOPTED MOTHER.

17 THE COURT: ALL RIGHT. GOOD MORNING,  
18 MRS. FRANKLIN. I'LL BE HAPPY TO HEAR FROM YOU.

19 MRS. FRANKLIN: I WANT TO SPEAK IN HIS  
20 BEHALF.

21 DAMEON IS A GOOD CHILD. I'VE HAD HIM SINCE  
22 HE BEEN ONE YEAR OLD AND I RAISED HIM. GOOD KID.

23 WHAT I NEED YOU TO KNOW IS HIS FATHER DIED IN  
24 1987; AND HE WENT INTO A SHELL, HE STARTED ACTING OUT.

25 I PUT HIM UNDER THE DOCTOR'S CARE FOR NINE  
26 YEARS. I DID. THEY WORKED WITH HIM. HE WAS REBELLING  
27 BECAUSE HIS FATHER DIED. I DIDN'T -- IT WAS HARD FOR  
28 ME; IT WAS VERY HARD FOR ME AND I DIDN'T UNDERSTAND. I

000325

19

1 THOUGHT SINCE HE, BEING A CHILD, THAT IT WOULD BE -- HE  
2 WOULD BE OKAY.

3 BUT I PUT -- WHEN THE SCHOOL WOULD CALL ME  
4 AND TELL ME HE WAS IN A SHELL, HE WOULDN'T TALK, HE  
5 WOULDN'T DO THIS OR HE STARTED FIGHTING, I HAD TO PUT  
6 HIM UNDER THE DOCTOR. HE HAD TWO DOCTORS; AND THE  
7 REPORT IS THERE, JUDGE, HOW I PUT HIM THERE; IT'S IN  
8 THE RECORD HERE, WHAT I DID.

9 I WANT TO YOU KNOW HE'S A GOOD CHILD. IT'S  
10 JUST THAT HE WAS REBELLING. AND HE DID NOT RAPE THAT  
11 YOUNG LADY. HIS DNA WAS NOT FOUND ON HER, NOT IN THERE  
12 -- THE RUBBER ~~THAT THEY HAD.~~

13 EXCUSE ME. I JUST WANT TO SPEAK MYSELF.

14 THE COURT: THAT'S FINE. GO AHEAD.

15 MRS. FRANKLIN: THAT THEY FOUND WAS NOT HIS;  
16 HE WAS NOT IN IT. HE TOLD YOU.

17 HE GOT A MENTAL PROBLEM. THE DOCTOR -- BOTH  
18 DOCTORS CAN TELL YOU THAT. HE'S FOUR YEARS BEHIND EVEN  
19 IN HIS AGE. OKAY?

20 I HAVE ANOTHER SON; HE WAS FIVE YEARS OLD  
21 WHEN I ADOPTED HIM, WHEN HIS MOTHER DIED. OKAY. HE  
22 WAS FIVE. HE'S A GOOD CHILD. NO PROBLEM. HE DIDN'T  
23 KNOW ABOUT HIS FATHER; BUT HE DID; HE DID; AND HE  
24 STARTED ACTING OUT. HE WOULDN'T LISTEN.

25 I TOLD HIM TO STAY AWAY FROM BAD KIDS AND HE  
26 WOULD NOT LISTEN.

27 NOW, THE POLICEMAN GOT HIM IN THAT ROOM IN  
28 THERE AND THEY HAD HIM TURNED ALL KIND OF WAYS. AND IT

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20

1 WOULD HAVE SCARED ME, TOO, IF I WOULD HAVE BEEN IN  
2 THERE, THE WAY THAT THEY WAS AFTER HIM.

3 DO YOU UNDERSTAND WHAT I'M SAYING, JUDGE?  
4 YOU DON'T MIND ME BEING MYSELF. I HAVE TO BE ME.  
5 OKAY?

6 AND I DIDN'T LIKE IT I WENT OUT BOTH TIMES  
7 BECAUSE THE WAY THEY WERE DOING HIM WAS LIKE HARASSING  
8 HIM; IT WAS HIS SICK PROBLEM. I EVEN GOT THE MEDICINE  
9 THAT HE SUPPOSED TO BE TAKING TO CALM HIM DOWN.

10 HE'S A GOOD CHILD. YOU PUT HIM AWAY -- HE'S  
11 SORRY FOR EVEN BEING THERE.

12 THE REASON WHY HE WAS OUT THERE EVEN AT THAT  
13 PLACE IS THAT I KICKED HIM OUT OF THE HOUSE; HE TOOK MY  
14 CAR WITHOUT PERMISSION. AND I TOLD HIM: NO, DAMEON,  
15 YOU HAVE TO ALWAYS ASK ME. AND I KICKED HIM OUT. SO,  
16 HE WAS OVER THERE WHERE HE WAS AT THAT TIME BECAUSE HE  
17 WAS STAYING THERE AT THAT BUILDING; HE WAS HOMELESS.

18 MAYBE IT WAS MY FAULT FOR DOING THAT; BUT I  
19 HAD TO BE STRICT AND I KEPT ON TRYING TO BE STRICT.

20 NOW, HE GOT HIMSELF INTO PROBLEM THAT WILL  
21 RUIN HIM THE REST OF HIS LIFE.

22 WHO IS GOING TO HIRE A PERSON FOR SOMETHING  
23 HE DIDN'T EVEN DO?

24 THE DNA SAID HE DIDN'T DO IT.

25 WHO IS GOING TO HIRE HIM?

26 WHO IS GOING TO GIVE HIM A JOB?

27 HE WON'T BE ABLE TO EVER GET A JOB. I WILL  
28 HAVE TO TRY TO HELP HIM THE REST OF HIS LIFE BECAUSE

000327

1 YOU AND I KNOW IF WE GO TO GET A JOB, THEY AREN'T GOING  
2 TO HIRE ANYBODY WITH A RECORD THAT SAYS HE RAPED  
3 SOMEBODY. THAT'S THE TRUTH.

4 HE'S SORRY; AND I'M SORRY THAT HE HAD TO GO  
5 THROUGH THIS. I'M SORRY THAT HIS FATHER DIED, BUT THAT  
6 WAS GOD'S WILL. HE DID WITH CAN CANCER. IT WAS GOD'S  
7 WILL.

8 THE COURT: MRS. FRANKLIN, THANK YOU VERY  
9 MUCH FOR YOUR TIME.

10 LET ME SAY TO YOU THAT PARENTS MANY TIMES  
11 EXPRESS SENTIMENTS AND CONCERNS OF THE KIND THAT YOU'VE  
12 EXPRESSED THIS MORNING. MR. FRANKLIN IS PUNISHED UNDER  
13 THE LAW NOT BECAUSE HE'S A BAD PERSON OR NOT A GOOD  
14 PERSON, BUT FOR WHAT HE DID; AND WHAT HE DID, HE DID.  
15 YOU DID NOT DO.

16 I CAN'T -- NOTHING I CAN SAY IS GOING TO  
17 REDUCE YOUR PAIN AS A PARENT; BUT IT'S NOT YOUR ACTS  
18 THAT ARE BEING PUNISHED; IT'S HIS.

19 I APPRECIATE YOUR COMMENTS THIS MORNING.

20 THANK YOU. ALL RIGHT.

21 MS. HILTON, DO YOU WISH TO BE HEARD?

22 MS. HILTON: SUBMITTED, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 MR. BROOME, ANYTHING FURTHER?

25 MR. BROOME: NO.

26 THE COURT: ALL RIGHT. THEN THE COURT WILL  
27 CONFIRM THE TENTATIVE SENTENCE AND TERMS INDICATED AS  
28 TO MR. FRANKLIN; AND RESERVING ONLY THE ISSUE OF CREDIT

000323

22

1 FOR TIME SERVED CALCULATION AND QUANTIFICATION OF THE  
2 RESTITUTION OBLIGATION WHICH, AS MENTIONED, WE'LL  
3 RETURN TO AFTER ALL OTHER SENTENCING ISSUES HAVE BEEN  
4 DEALT WITH.

5 WE'LL TURN NOW TO MR. LYTLE.

6 LIKEWISE, THE COURT HAS CONSIDERED THE  
7 PROBATION DEPARTMENT REPORT; THE COURT HAS CONSIDERED  
8 THE PEOPLE'S MEMORANDUM WITH REGARD TO SENTENCING.

9 THE COURT IS NOT AWARE OF ANYTHING HAVING  
10 BEEN SUBMITTED BY MR. HOVE OR OTHERWISE ON MR. LYTLE'S  
11 BEHALF. HAS SOMETHING BEEN SUBMITTED?

12 MR. HOVE: NO, YOUR HONOR, IT HAS NOT.

13 THE COURT: MR. LYTLE, OF COURSE, REMAINS IN  
14 A CIRCUMSTANCE WHERE THERE WAS A HUNG JURY AS TO SOME  
15 OF THE COUNTS.

16 THE DETERMINATION, I TAKE IT, HAS YET TO BE  
17 MADE, MS. HILTON, AS TO WHETHER THE PEOPLE ARE GOING TO  
18 RETRY MR. LYTLE ON THOSE CHARGES; IS THAT CORRECT?

19 MS. HILTON: THAT IS FAIR.

20 THE COURT: REMAINS UNDETERMINED AT THIS  
21 POINT.

22 THE EVIDENCE IN THE CASE WOULD CERTAINLY  
23 INDICATE THAT MR. LYTLE COULD BE CONSIDERED AS THE  
24 PRINCIPAL ACTOR AND BAD ACTOR IN THE EVENTS WHICH  
25 OCCURRED ON THE DAY IN QUESTION. BECAUSE OF THE  
26 FAILURE OF THE JURY TO REACH RESOLUTION OF ALL COUNTS,  
27 WE'RE CONCERNED WITH COUNTS III AND IV.

28 AGAIN, I'M PREPARED TO PROCEED WITH THE



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23

1 PROPOSED DISPOSITION AS CALCULATED BY THE PEOPLE; AND  
2 ONCE MORE, THE COURT CAN CONCEIVE OF SOME ALTERNATIVE  
3 DISPOSITIONS BUT LIMITED, OF COURSE, BY THE INCOMPLETE  
4 DETERMINATION OF THE REMAINING COUNTS.

5 THE AGGRAVATED TERM OF NINE YEARS IN STATE  
6 PRISON ON COUNT III AND THE AGGRAVATED TERM OF NINE  
7 YEARS IN STATE PRISON ON COUNT IV TO BE SERVED  
8 CONSECUTIVELY, FOR A TOTAL OF 18 YEARS AT 85% TIME, I  
9 THINK, IS AN APPROPRIATE DISPOSITION.

10 THE REMAINING TERMS AND CONDITIONS OF  
11 PROBATION, AS RECOMMENDED BY THE PROBATION DEPARTMENT,  
12 LIKEWISE APPEAR TO THE COURT TO BE APPROPRIATE.

13 AFTER WEIGHING ALL OF THE SENTENCING FACTORS  
14 AND THE EVIDENCE IN THE CASE AND WHAT APPEARS TO BE NOT  
15 JUST A LACK OF REMORSE BUT AN AGGRESSIVE FORM OF DENIAL  
16 OF ANY RESPONSIBILITY FOR MR. LYTLE'S PARTICIPATION IN  
17 THESE EVENTS, AND THE COURT -- WHATEVER HOPE THERE MAY  
18 BE FOR MR. GULLEDGE AND MR. LYTLE TO, AT SOME POINT,  
19 FULLY ACCEPT AND RECOGNIZE THEIR RESPONSIBILITY, THE  
20 COURT HAS LITTLE GROUNDS FOR OPTIMISM AS TO MR. LYTLE.

21 THE COURT WOULD BE PREPARED TO ACCEPT THE  
22 PROBATION DEPARTMENT'S RECOMMENDATIONS WITH REGARD TO A  
23 RESTITUTION FINE IN THE SUM OF \$400 PURSUANT TO PENAL  
24 CODE SECTION 1202.4(B); A LIKEWISE ADDITIONAL  
25 RESTITUTION FINE, THAT IS TO SAY, AN ADDITIONAL \$400  
26 PURSUANT TO PENAL CODE SECTION 1202.45 TO BE STAYED  
27 PENDING SUCCESSFUL COMPLETION OF PAROLE.

28 A RESTITUTION TO BE SHARED JOINTLY AND

000330 24

1 SEVERALLY WITH THE CO-DEFENDANTS; A RESERVATION OF  
2 JURISDICTION FOR ADDITIONAL RESTITUTION CLAIMS PURSUANT  
3 TO PENAL CODE SECTION 1202.4(F);

4 AND ORDER THAT MR. LYTLE REGISTER PURSUANT TO  
5 PENAL CODE SECTION 290;

6 AND THAT HE SUBMIT, IF HE HAS NOT HERETOFORE  
7 DONE SO, TO BLOOD AND SALIVA SAMPLES PURSUANT TO PENAL  
8 CODE SECTION 296;

9 AND LIKEWISE, SUBMIT TO AN H.I.V. TEST.

10 THAT'S WHAT THE COURT CONTEMPLATES WITH  
11 REGARD TO MR. LYTLE.

12 MR. HOVE, I NEGLECTED TO ASK YOU: ANY LEGAL  
13 CAUSE WHY SENTENCE SHOULD NOT BE IMPOSED AT THIS POINT?

14 MR. HOVE: THERE'S NO LEGAL CAUSE, YOUR  
15 HONOR.

16 THE COURT: DO YOU WISH TO BE HEARD WITH  
17 REGARD TO MR. LYTLE'S DISPOSITION?

18 MR. HOVE: BASED UPON WHAT THE COURT'S  
19 ALREADY INDICATED WITH REGARD TO MR. GULLEDGE AND  
20 MR. FRANKLIN, WE'LL SUBMIT IT.

21 THE COURT: MS. HILTON, DO YOU WISH TO BE  
22 HEARD?

23 MS. HILTON: IT'S SUBMITTED.

24 THE COURT: THE COURT WILL CONFIRM THAT  
25 SENTENCE WITH REGARD TO MR. LYTLE.

26 LET'S RETURN TO THE RESTITUTION CLAIMS ISSUES  
27 IN THE PROBATION REPORT. THE SUM INDICATED WAS  
28 \$960.25. THE COURT HAS A LETTER FROM THE VICTIMS'

000331

1 COMPENSATION BOARD.

2 I WANTED TO CLARIFY WITH MS. HILTON AS TO  
3 WHETHER, IN FACT, THAT IS THE TOTAL SUM THAT IS  
4 PRESENTLY DUE TO THE VICTIMS' COMPENSATION BOARD.

5 MS. HILTON: I'M SORRY. I MISSED THAT.

6 THE COURT: YES. MY QUESTION IS: IS THE  
7 TOTAL SUM WHICH IS DUE BY WAY OF RESTITUTION TO THE  
8 VICTIMS' COMPENSATION BOARD THE \$960.25 FIGURE WHICH  
9 APPEARS IN THE PROBATION REPORT?

10 MS. HILTON: THAT'S THE LAST NUMBER I HAVE,  
11 YOUR HONOR, YES.

12 THE COURT: THAT IS THE AGGREGATE NUMBER; IT  
13 HAS NOT BEEN DIVIDED THREE WAYS?

14 MS. HILTON: THAT IS CORRECT. THEY ARE  
15 CONTINUING TO PAY OUT; SO I WOULD ASK THE COURT TO  
16 RESERVE JURISDICTION AS TO THE REST.

17 THE COURT: AND I INTEND TO DO SO.

18 MS. HILTON: THANK YOU.

19 THE COURT: WITH REGARD TO MS. DOE'S  
20 INDIVIDUAL RESTITUTION CLAIM, IS NOT DUPLICATIVE OF THE  
21 VICTIMS' COMPENSATION BOARD, WHAT IS THE SUM THAT IS  
22 REQUESTED AS OF TODAY?

23 MS. HILTON: THAT WAS \$1,580 BEFORE TAXES;  
24 THE LAST TIME THE VICTIM HAD TO COME FORWARD THE  
25 MORNING OF AUGUST 23RD -- SHE MAKES APPROXIMATELY \$8 AN  
26 HOUR FOR FOUR HOURS, WOULD BE \$32 FOR THAT DAY. I  
27 DIDN'T KNOW IF THE COURT WANTED TO PUT THAT ON THE  
28 DEFENDANTS OR ON MR. HOVE; SO I DID NOT SUBMIT --

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26

1 THE COURT: I'LL ADDRESS THAT SEPARATELY AS  
2 TO MR. HOVE WHEN WE'VE CONCLUDED THE SENTENCING  
3 PROCEEDING ITSELF.

4 ALL RIGHT. THE COURT WOULD CONTEMPLATE THE  
5 FOLLOWING ORDER WITH REGARD TO RESTITUTION:

6 THE SUM OF \$960.25 PAYABLE TO THE VICTIMS'  
7 COMPENSATION BOARD TO BE SHARED JOINTLY AND SEVERALLY  
8 BY EACH OF THE THREE DEFENDANTS; AND WITH THE COURT TO  
9 RESERVE JURISDICTION PURSUANT TO PENAL CODE SECTION  
10 1202.4(F) AS TO ANY ADDITIONAL RESTITUTION CLAIMS; AND  
11 THE SUM OF \$1,580 TO BE PAID TO THE VICTIM, LIKEWISE TO  
12 BE SHARED JOINTLY AND SEVERALLY BY THE DEFENDANTS.

13 HOW WOULD YOU ASK THAT THAT BE PAID; IN OTHER  
14 WORDS, HOW WOULD THOSE FUNDS BE ROUTED?

15 MS. HILTON: I ASSUME THROUGH CENTRAL  
16 COLLECTIONS OR THEIR PAROLE AGENT, I BELIEVE, WOULD BE  
17 THE BEST WAY, SO THAT THEY HAVE NO DIRECT CONTACT WITH  
18 THE VICTIM, OBVIOUSLY.

19 THE COURT: LET ME HEAR FROM EACH COUNSEL, IF  
20 THERE'S ANY OBJECTION TO THE CONTEMPLATED RESTITUTION  
21 ORDER.

22 MR. MC DOUGALL?

23 MS. HILTON: I'M SORRY. THEY CAN ALSO DO IT  
24 THROUGH THE VICTIMS' COMPENSATION BOARD. I'M SORRY.

25 THE COURT: I THINK THAT WOULD BE THE  
26 PREFERABLE WAY TO DO IT.

27 MR. MC DOUGALL?

28 MR. MC DOUGALL: SUBMITTED, YOUR HONOR.

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27

1 THE COURT: MR. BROOME?

2 MR. BROOM: SUBMITTED.

3 THE COURT: MR. HOVE?

4 MR. HOVE: JUDGE, I HAPPEN -- I HAVE TO  
5 OBJECT.

6 MY OBJECTION IS BASED ON THIS: I AM NOT  
7 CLEAR WHETHER THE \$1,580 IS INCLUDED IN THE ORIGINAL  
8 COMPUTATIONS GIVEN TO THE VICTIMS' RESTITUTION BOARD,  
9 THE BOARD AS NAMED;

10 SECONDLY, JUDGE, I DON'T KNOW -- ALL WE HAVE  
11 HERE IN TERMS OF THIS \$1,580 IS AN INDICATION THAT THE  
12 VICTIM TOOK A PERSONAL LEAVE OF ABSENCE FOR A MONTH. I  
13 DON'T KNOW THE REASON FOR THAT, TAKING THAT MONTH OFF.

14 ON BEHALF OF MR. LYTLE, I HAVE TO OBJECT TO  
15 THAT AMOUNT BEING INCLUDED BECAUSE I THINK THAT'S NOT  
16 SUBSTANTIATED AS RELATING TO THE CASE. I DON'T KNOW  
17 WHETHER THAT WOULD BE COMPENSABLE, AS WELL.

18 THE COURT: I SUSPECT PART OF THE VICTIM'S  
19 LEAVE TIME WAS THE LENGTH OF TIME SHE WAS KEPT ON THE  
20 STAND AND CROSS-EXAMINED BY DEFENSE COUNSEL; CERTAINLY,  
21 THAT'S A FACTOR.

22 MR. HOVE: THAT MAY BE. I APPRECIATE THE  
23 FACT THAT THAT WENT A PERIOD OF THREE OR FOUR DAYS; SO  
24 I UNDERSTAND THAT ASPECT, YOUR HONOR, AND I'M NOT  
25 UNSYMPATHETIC TO THE VICTIM IN TERMS OF THAT.

26 I'M JUST SAYING, IN TERMS OF THE COURT'S  
27 ORDER, I THINK THAT FOR MY CLIENT'S SITUATION I HAVE TO  
28 OBJECT BECAUSE I DON'T THINK THE AMOUNT HAS BEEN



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1 VERIFIED.

2 THE COURT: WITH REGARD TO THE ISSUE OF  
3 WHETHER THERE IS ANY DUPLICATION OF THE VICTIM'S DIRECT  
4 LOSS CLAIM AND THE VICTIMS' COMPENSATION BOARD SUM, CAN  
5 YOU SHED ANY LIGHT ON THAT, MS. HILTON?

6 MS. HILTON: IF WE COULD TAKE A FIVE MINUTE  
7 BREAK, I COULD ASK; BUT I BELIEVE THE AMOUNT IS FROM  
8 COUNSELING FEES --

9 THE COURT: ALL RIGHT.

10 MS. HILTON: -- AND IT IS NOT DUPLICATIVE OF  
11 THE HOURLY WAGE THAT SHE MISSED.

12 THE COURT: WHY DON'T WE TAKE JUST A MOMENT,  
13 IF YOU'D LIKE TO CONFER; WE'LL PAUSE FOR JUST A MOMENT.

14 MS. HILTON: BE RIGHT BACK.

15 (SHORT PAUSE IN THE PROCEEDINGS.)

16 THE COURT: LET'S GO BACK ON THE RECORD.

17 WE'RE BACK ON THE RECORD NOW. ALL COUNSEL  
18 AND DEFENDANTS ARE PRESENT.

19 MS. HILTON, WITH REGARD TO THE RESTITUTION  
20 ISSUE?

21 MS. HILTON: YES, YOUR HONOR.

22 I DID SPEAK WITH A MEMBER OF THE VICTIMS'  
23 RESTITUTION CLAIMS BUREAU FROM OUR OFFICE, AND THE  
24 "M.D." ABOVE THE COLUMN THAT HAS \$1,725, THAT ALL  
25 COUNTS AS -- IS MEDICAL EXPENSES, \$1725 AND "AIDS"  
26 REFERS TO MENTAL HEALTH, AND THAT'S THE \$943.

27 I HAVE A REPRESENTATIVE HERE, IF YOU WANT  
28 MORE; BUT THAT WOULD ANSWER MR. HOVE'S QUESTION ABOUT

1 WHAT THAT TOTAL AMOUNT IS.

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2 THE COURT: MR. HOVE, DOES THAT CLARIFY THE  
3 ISSUE TO YOUR SATISFACTION?

4 MR. HOVE: IT DOES, YOUR HONOR. I STILL HAVE  
5 THE BLANKET OBJECTION TO THE TOTAL AMOUNT.

6 THE COURT: ALL RIGHT. THEN THE MATTER  
7 HAVING BEEN SUBMITTED, THE COURT IS GOING TO ORDER  
8 RESTITUTION IN THE SUMS PREVIOUSLY INDICATED: THE SUM  
9 OF \$960.25 TO BE PAID TO THE VICTIMS' COMPENSATION  
10 BOARD TO BE SHARED JOINTLY AND SEVERALLY BY THE  
11 DEFENDANTS; AND THE SUM OF \$1,580 TO BE PAYABLE TO THE  
12 VICTIM BUT VIA THE VICTIMS' COMPENSATION BOARD,  
13 LIKEWISE TO BE SHARED JOINTLY AND SEVERALLY AMONG THE  
14 THREE DEFENDANTS.

15 THE COURT IS PERSUADED THERE WAS MORE THAN  
16 SUFFICIENT EVIDENCE IN THE RECORD FOR JOINT AND SEVERAL  
17 ALLOCATIONS FOR ALL OF THESE EXPENSES.

18 WITH REGARD TO CREDIT FOR TIME SERVED: WHILE  
19 WE WERE BRIEFLY OFF THE RECORD, THE DEPUTY INFORMED ME  
20 THAT ACCORDING TO THE SHERIFFS' DEPARTMENT  
21 CALCULATIONS, MR. LYTLE AND MR. GULLEDGE (SIC) EACH  
22 HAVE -- MR. LYTLE AND MR. FRANKLIN EACH HAVE 931 DAYS  
23 ACTUAL, PLUS 140 DAYS SAGE, CREDITS FOR A TOTAL OF 1071  
24 DAYS CREDITS FOR EACH MR. LYTLE AND MR. FRANKLIN;

25 WITH REGARD TO MR. GULLEDGE, THE CALCULATION  
26 WOULD BE 868 DAYS ACTUAL, 130 DAYS SAGE CREDITS, FOR A  
27 TOTAL OF 998 DAYS.

28 IS THERE ANY DISAGREEMENT, MS. HILTON, ON THE

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1 PEOPLE'S BEHALF AS TO THE CALCULATIONS?

2 MS. HILTON: NO, YOUR HONOR.

3 THE COURT: MR. MC DOUGALL, ANY THERE ANY  
4 DISAGREEMENT AS TO THE CALCULATION WITH REGARD TO  
5 MR. GULLEDGE?

6 MR. MC DOUGALL: NO. THAT APPEARS TO BE  
7 CORRECT AS TO MR. GULLEDGE.

8 THE COURT: MR. BROOME, AS TO MR. FRANKLIN,  
9 IS THERE ANY DISAGREEMENT WITH REGARD TO THE  
10 CALCULATION?

11 MR. BROOME: I HAVE NO IDEA; BUT SUBMITTED.

12 THE COURT: MR. HOVE, AS TO MR. LYTLE?

13 MR. HOVE: THEY APPEAR ACCURATE.

14 THE COURT: THOSE CREDITS WILL BE GIVEN AS  
15 EXPRESSED ON THE RECORD.

16 EACH OF THE DEFENDANTS IS NOTIFIED THEY HAVE  
17 THE RIGHT TO APPEAL THEIR CONVICTIONS AND SENTENCING BY  
18 FILING A NOTICE OF APPEAL WITHIN 60 DAYS OF TODAY'S  
19 DATE.

20 EACH OF THE DEFENDANTS WILL BE REMANDED --  
21 WILL REMAIN IN THE CUSTODY OF THE SHERIFF OF ALAMEDA  
22 COUNTY UNTIL THEY CAN BE DELIVERED TO AND REMANDED TO  
23 THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS TO SERVE  
24 THEIR TERMS IN STATE PRISON.

25 MS. HILTON, ANYTHING FURTHER BY WAY OF  
26 INFORMATION FOR THE ABSTRACT OR OTHERWISE FOR THE  
27 RECORD THIS MORNING?

28 MS. HILTON: NO, YOUR HONOR.

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31

1 THE COURT: OKAY. MR. MC DOUGALL, ANYTHING  
2 FURTHER FOR THE RECORD?

3 MR. MC DOUGALL: NO, YOUR HONOR. THANK YOU.

4 THE COURT: THANK YOU, SIR.

5 MR. BROOME?

6 MR. BROOME: NO, YOUR HONOR.

7 THE COURT: MR. HOVE?

8 MR. HOVE: NO, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. HOVE: WE HAVE THE OTHER ASPECT.

11 THE COURT: ALL OF THE OTHER DEFENDANTS AND  
12 COUNSEL ARE FREE TO GO, AS IS MS. HILTON.

13 MR. HOVE, YOU WERE EXPECTED TO BE HERE ON  
14 AUGUST 23RD. AS I EXPRESSED ON THE RECORD AT THE  
15 OUTSET, AND AS I DID ON THAT OCCASION, I WAS, TO SAY  
16 THE LEAST, DISAPPOINTED AND SURPRISED BY YOUR  
17 NON-APPEARANCE.

18 I'M CONTEMPLATING A NUMBER OF ALTERNATIVES,  
19 ONE OF WHICH IS TO CITE YOU FOR CONTEMPT; ANOTHER  
20 ALTERNATIVE IS FOR THE COURT TO FIND YOU IN VIOLATION  
21 OF A LAWFUL ORDER OF THE COURT AND TO IMPOSE SANCTIONS  
22 PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 177.5, AND  
23 SANCTION THE COURT WOULD CONTEMPLATE IS THAT YOU PAY  
24 THE COUNTY CLERK THE SUM OF \$250 IN SANCTIONS.

25 I'M PREPARED TO IMPOSE THAT SANCTION AND  
26 PERMIT YOU TO DISCHARGE THAT RESPONSIBILITY BY PAYING  
27 TO THE VICTIM THE SUM OF \$32 TO BE PAYABLE THROUGH THE  
28 DISTRICT ATTORNEY'S OFFICE.

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1 DO YOU WISH TO BE HEARD?

2 MR. HOVE: I SUBMIT.

3 THE COURT: ALL RIGHT.

4 MR. HOVE: I SUBMIT IT.

5 I DO APOLOGIZE TO THE COURT AND TO THE VICTIM  
6 AND EVERYBODY FOR ANY INCONVENIENCE.

7 THE CIRCUMSTANCES WERE SUCH, I THINK AS THE  
8 COURT RELATED, I WAS IN TRIAL; WE DIDN'T KNOW IF WE  
9 WERE GOING TO BE IN SESSION ON THAT TRIAL THE DAY THAT  
10 I WAS TO APPEAR HERE. WE DID, IN FACT, GO OVER TO THAT  
11 MORNING TO FINISH THE TRIAL, WHICH IT HAD SOME  
12 INTERRUPTIONS AND JUDGE HASHIMOTO WAS VERY INTERESTED  
13 IN GETTING THE CASE COMPLETED.

14 I WAS AWARE THAT A MOTION FOR NEW TRIAL WAS  
15 GOING TO BE FILED PROBABLY ON THE DAY OF THE HEARING.  
16 BASED ON THAT, IT WAS ANTICIPATED, IN MY MIND, THAT THE  
17 MATTER WOULD BE CONTINUED, AT ANY RATE.

18 MY RECOLLECTION IS WE DIDN'T FINISH UNTIL  
19 LATE AT NIGHT BEFORE I CALLED THE COURT TO LET THEM  
20 KNOW EXACTLY WHERE I WAS AND WHAT THE SITUATION WAS.

21 SO, THAT'S THE EXTENT OF THE FACTS.

22 THE COURT: YOUR COMMENTS ARE NOTED,  
23 MR. HOVE.

24 DO YOU NEED MORE THAN TEN DAYS TO DELIVER A  
25 CHECK FOR \$32 TO THE DISTRICT ATTORNEY'S OFFICE?

26 MR. HOVE: JUDGE, I'LL GIVE THEM EITHER CASH  
27 OR CHECK IMMEDIATELY.

28 THE COURT: EXCELLENT. ALL RIGHT.



1 MR. HOVE: TO WHOM SHOULD THAT BE PAID?

2 THE COURT: HOW WOULD YOU WANT PAYMENT,

3 MS. HILTON?

4 MS. HILTON: IS IT GOING TO BE CASH OR CHECK?

5 MR. HOVE: IT WILL BE CASH.

6 MS. HILTON: THEN YOU DON'T TO WRITE A CHECK.

7 THE COURT: NEED NOT BE MADE PAYABLE.

8 MR. HOVE: I'M GOING TO SUBMIT \$35.

9 THE COURT: EXCELLENT.

10 MR. HOVE: I DO NOT EXPECT CHANGE.

11 THE COURT: YOU'LL GET \$3 CREDIT FOR TIME

12 SERVED.

13 MS. DOE, GOOD LUCK TO YOU.

14 MR. HOVE: THANK YOU, YOUR HONOR.

15 THE COURT: YOU'RE WELCOME.

16 THANK YOU, MR. HOVE.

17 \* \* \*

18 (FRIDAY, SEPTEMBER 7, 2001 PROCEEDINGS CONCLUDED.)

19 \* \* \*

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**E X H I B I T #5**

**PROBATION OFFICER'S REPORT AND RECOMMENDATION**

000292

(RCD - 04/02/01)

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 002

Date: September 7, 2001

Hon. ROBERT B. FREEDMAN

, Judge

Juanita Moore, Deputy Clerk  
Karen Roberson, Reporter

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff

Counsel appearing  
for PlaintiffDanielle Hilton, Deputy  
District Attorney

vs.

Counsel appearing  
for Defendant

Thomas Broome, Esquire

DAMEON FRANKLIN

Defendant

Probation Officer  
appearing

Deputy

NATURE OF PROCEEDINGS: REPORT AND SENTENCE

Case No. 136007B

PFN: AYA853

CEN: 9228736

Defendant is present.

Defendant having been convicted by Jury Verdict of the offense(s) of a felony(ies) shown below. The defendant waives formal arraignment for sentence and has no legal cause to show why the judgment of this Court should not be pronounced against him/her.

The Court pronounces judgment. Defendant is to be punished by imprisonment in the State Prison of the State of California for:

☐ Additional counts are listed on attachment  
\_\_\_\_\_ (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			TERM L,M,U	Concur.	Consec 1/3 Violent	Consec 1/3 NON Violent	Consec Full Term	Incom- plete sentence Refer 5	654 Stay	Principal o Consecut Time Impo
						JT	CT	plea								
01	PC	261(a)(2)/264.1	RAPE W/ CONCERT	1999	06-21-01	X			U							9
02	PC	261(a)(2)	RAPE W/CONCERT	1999	06-21-01	X			U				X			9
03	PC	288(a)(d)	ORAL COPULATION	1999	06-21-01	X			M	X						7
04	PC	288(a)(d)	ORAL COPULATION	1999	06-21-01	X			M	X						7
					- -											

TOTAL TERM: 18 YEAR(S), 0 MONTH(S).

Defendant has been in custody for 931 actual days plus 140 days good time/work time credit for a total of 1071 days as a result of the same criminal act(s) for which he/she has been convicted.

Defendant is ordered to pay Restitution Fine of \$ 800.00 pursuant to Penal Code section 1202.4(b) and an additional Parole Restitution Fine of \$ 800.00 pursuant to Penal Code section 1202.45 is suspended pending successful completion of parole. Defendant is ordered to pay Restitution to the victim in the amount of \$ 960.25 + 1580.00 pursuant to Penal Code section 1202.4(f).

Restitution is reserved.

Defendant is ordered to pay Probation Investigation Fee of 100.00

Defendant is to submit to blood/saliva sample for DNA testing pursuant to Penal Code section 296.

Defendant is to register as a sex offender pursuant to Penal Code section 290.

The defendant is remanded to the custody of the Alameda County Sheriff's Department - NO BAIL.

-401 (REV. 5/01)

## RENE DAVIDSON COURTHOUSE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA  
CLERKS DOCKET AND MINUTES

000300

DOCKET NAME **FRANKLIN, DAMEON** DEPT. **002** CRT. DATE/TIME **9/07/01 10:00**

VENT NAME **FRANKLIN, DAMEON RAY** RPT. NO. **98-89506** DOCK NO. **136007B**

PROC. **R&S MNT** CEN. **9228736** PFN. **AYA853** A DAY **02/19/99** SJ DATE **3/18/02**

**COUNTS** PIC **00500** AAG-50 ACITY DB

CHARGES **1)F261A)1)CON PC CONVICTED-JURY T 4)F288(A)(D) PC 1 PR CONVICTED-JURY T**  
**2)F261A)2)CON PC CONVICTED-JURY T 5)F286(D) PC** **ACQUITTED**  
**3)F289(A)(D) PC CONVICTED-JURY TR 6)F289(A) PC** **ACQUITTED**

STAT **SET BAIL \$145,000.00** TOTAL DAYS IN CUSTODY: **930** UNDER **21**  
**02/28/78**

MAIL STAT. BOND DT. BOND CO. DOB **02/28/78**

MAIL STAT. BOND DT. BOND CO. BAC

INE/REST. DATE PAID REC. NO. **NORTH 1** TIME WAIVED **TWS**

## PROCEEDING

DCCO:

JUDGE **ROBERT FREEDMAN** DEP. D.A. **Danielle Hilhor**

REP. CLERK **JUANITA MOORE** DEF. ATTY. **THOMAS BROOME** ☐ Not Present

REPORTER **Karen Robinson** OTHERS

Defendant: ☒ Present ☐ Not Present ☐ Excused ☒ In Custody ☐ Pro Per

☐ Interpreter is present. Language spoken: \_\_\_\_\_

☐ Defendant duly arraigned/advised as to constitutional rights ☐ Defendant waives arraignment ☐ Waiver of Rights filed

☐ Defendant served: ☐ Complaint ☐ Discovery ☐ Petition ☐ Motion ☐ Protective Order (PC 136.2)

☐ Referred to Public Defender ☐ Public Defender files conflict ☐ Financially ineligible ☐ Private counsel appointed

☐ Plea Withdrawn ☐ Change of Plea ☐ Plea to count(s) ☐ Not Guilty ☐ Guilty ☐ No Contest/Found Guilt

☐ Stipulates to: lesser included / reasonably related offense of count(s) to charge(s)

☐ Time waived for: ☐ Preliminary Examination days ☐ Trial ☐ Sentence ☐ Time not waived ☐ Time waiver withdrawn

☐ Clauses: ☐ Stricken ☐ Admitted ☐ Sentencing Purposes Only

☐ Priors: ☐ Stricken ☐ Admitted ☐ Denied

☐ Probation: ☐ Conditional Sentence: ☐ Granted for years/months ☐ See attached conditions

☐ Revoked ☐ Restored ☐ Modified ☐ Extended to ☐ Continue on same terms and conditions ☐ Terminated

☐ Defendant admits probation violation ☐ Previous order revoking probation vacated, set aside, defendant restored to probation

☐ Submit to search and seizure of person, residence, vehicle or any property under defendant's control

☐ No contact with / not to annoy, directly or indirectly: stay at least away

☐ Additional order(s):

☐ Petition/Motion ☐ Granted ☐ Denied ☐ Withdrawn

☐ Referred to: ☐ Probation Dept. ☐ Financial Hearing Officer ☐

Restitution: ☐ Referred to for Determination ☐ Ordered ☐ Reserved ☐ Modified

☐ Bail Forfeited ☐ Bail Forfeiture Set Aside ☐ Bail Reinstated ☐ Bail Exonerated ☐ Summary Judgment Entered

☐ Bench Warrant: ☐ Issued ☐ Withheld ☐ Withdrawn ☐ Bail Set at \$ ☐ No Cite Release ☐ Night Service

Motion for new trial - DENIED

T1-261(a)(2)/264.1 (Upper) 9 yrs

T2-261(a)(2)/264.1 (Upper) 9 yrs c/s

T3-288(a)(d) (MIO) 4 yrs c/c

T4-288(a)(d) (MIO) 7 yrs c/c

TOTAL 10 yrs SP

CTS 931 + 140 = 1,071

\$800 per 1202A

\$800 per 1202.45 - Street

\$940.25 per 1202.4(c) RF

\$1,500.00 Victim Restitution

Rest reserved for future bills

A jointly, separately 10 pay Victim Rest.

Pay per 290 PC

SUN DNP/131000 per 256

SUN 1710 TOST

A advise appeal 1/1/03

t. Date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_ Proc.: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_ Dept.: \_\_\_\_\_ Proc.: \_\_\_\_\_

JPUS Codes: \_\_\_\_\_

DOCKET NAME **FRANKLIN, DAMEON RAY**CT. DATE **9/07/01** DOCK NO. **136007B**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA, STATE OF CALIFORNIA**

THE PEOPLE OF THE STATE OF CALIFORNIA

VS

**FRANKLIN, DAMEON**

DEFENDANT

**PROBATION OFFICER'S REPORT AND RECOMMENDATION**

EVENT NAME **FRANKLIN, DAMEON RAY**

C.I.I. NAME **FRANKLIN, DAMEON RAY**  
(MAILING)

JUDGE **FREEDMAN**

ADDRESS **476 Creighton Way, Oakland, CA.**

DEPARTMENT NO. **002**

D.O.B. **02/28/78**

(AGE: **23** )

DOCKET NO. **136007B**

SEX **MALE**

ETHNIC **BLACK**

REFERRAL DATE **06/21/01**

HT. **5FT 9IN** WT. **145**

HAIR **BLACK**

C.I.I. NO. **11466832**

COURT DATE **08/23/01**

CEN. **9228736**

DEFENSE ATTORNEY **THOMAS BROOME**

PFN. **AYA853**

REPORT BY **FRANK TAPIA**  
DEPUTY PROBATION OFFICER

CHARGES FILED **PC 261A)1)CON F; PC 261A)2)CON F; PC 288(A)(D) F**  
**PC 288(A)(D) 1/PR F; PC 286(D) F; PC 289(A) F**

CURRENT CHARGES **PC 261A) )CON F; PC 261A)2)CON F; PC 288(A)(D) F**  
**PC 288(A)(D) 1/PR F.**

CHARGE STATUS **JURY VERDICT**

DATE AND PLACE OF **ARREST**

ARREST AGENCY **SHERIFFS OFFICE**

**02/19/99 SRJ BOOKING**

**DB**

CURRENT CUSTODY STATUS **IN CUSTODY**

DAYS IN JAIL THIS CHARGE **917**

CUSTODY STATUS THIS CHARGE **IN CUSTODY**

O.R. ON

BAILED ON

AMOUNT \$ **145,0**

MARRIED: Yes ☐ No ☒ **X** LIVES WITH **HOMELESS**

INCOME SOURCE **UNEMPLOYED**



FRANKLIN, DAMEON

Docket #: 136007B

CRIMINAL HISTORY

Juvenile:

<u>Date</u>	<u>Offense and Disposition</u>
1-27-96 Oakland	<u>Offense:</u> PC 470. <u>Disposition:</u> 4-11-96, informal supervision. 10-3-96, satisfactory adjustment and dismissal.

Adult:

<u>Date</u>	<u>Offense and Disposition</u>
5-14-96 Oakland	<u>Offense:</u> PC 602(1) M. <u>Disposition:</u> 5-17-96, 24 months Court probation, county jail four days.
4-18-97 Oakland	<u>Offense:</u> VC 10851(A) F. <u>Disposition:</u> 7-2-97, three years formal probation. 12-4-98, one year county jail, probation extended to 7-2-02.
9-15-98 Berkeley	<u>Offense:</u> PC 211 2 <sup>nd</sup> deg. F. <u>Disposition:</u> 12-4-98, five years formal probation, county jail 122 days, no firearms, obtain GED.

Pending Criminal Cases: None. According to NCIC, the defendant has no outstanding warrants.

Prior Probation History: Since 1996 the defendant has had one grant of Court probation and two grants of formal probation with two revocations and one failure to appear in Court.

Institutional and Parole History: None.

PRESENT OFFENSE

Offense Summary: According to the District Attorney's Summary of the offense:

"On September 4, 1998 Jane Doe left work at about 5pm on her way to her mother's house in Concord. Jane walked up to a boy named Andrew and asked him if he had a light for her cigarette. Jane and

FRANKLIN, DAMEON

Docket #: 136007B

Andrew began to. A few minutes later defendant Lytle and his friends walked up to Andrew and Jane. They all began to talk and defendant Lytle began flirting with Jane.

"Jane agreed to go with the group including defendant Lytle, defendant Franklin and defendant Gullledge to a park and hung out there for a while playing with a puppy and talking.

"Defendant Lytle suggested that they all get alcohol and Jane chipped in money. Defendant Lytle had someone buy Thunderbird and Colt 45. The group went to another park, and they hung out there. At some point at the park Jane kissed defendant Lytle. Jane doesn't know how much she drank. A little while later she felt nauseous and dizzy. At this point it started getting dark and Jane told everyone that she needed to get home.

"Everyone started to walk back to the BART station. On the way Jane got sick and threw up. Defendant Lytle and Jane and at some point Andrew went down into BART and someone noticed that Jane was not doing well and told security. Defendant Lytle told Jane that they had to leave so they wouldn't get in trouble.

"The group took the bus to Oakland. Jane had no idea where they were. The group walked to Chabot School where defendant Lytle was once a student. Defendant Lytle took Jane up to a grassy area telling her they were going to Rockridge BART. Jane kept saying she wanted to go home. Defendant Lytle made a move on Jane and she pushed him away. Defendant Lytle started to hit her around the face, pushing her onto the ground and hit her in the head with the end of a screwdriver. Defendant Lytle kept hitting her in the head until she stopped fighting. Defendant Franklin and defendant Gullledge came up the hill onto the grassy area and joined in. The victim testified that she was raped by defendant Lytle, forced to orally copulate him and sodomize by him.

"Jane also testified that while she was held down, she was raped by another of the group and forced to orally copulate the third. After the attack was over Jane went screaming. She jumped in to the middle of the street, banged on car windows and ran to a stranger's house to get help."

Codefendant(s): Stacy Lytle (136007A) is scheduled for sentencing in Superior Court Department 002 on August 23, 2001.

Shawnte Gullledge (136665) is appearing for sentencing in Superior Court Department 002 on August 23, 2001.

Negotiated Plea: In a jury verdict on June 21, 2001, the defendant was found guilty of violating Penal Code 261(A)(2), Clauses 264.1, felony, Penal Code 261(A)(2) Clauses 261.1, felony, Penal Code 288A(D), felony and Penal Code 288A(D), felony.

Attorney Statements:

District Attorney: Attached.

Defense Attorney: Not received.

FRANKLIN, DAMEON

Docket #: 136007B

Defendant's Statement Re Offense: In a video interview on July 3, 2001, the defendant stated: "I got drunk and happened to be in the wrong place at the wrong time. I didn't do what I should have done and left."

In an interview that took approximately one hour, the defendant then gave an account of the incident which is summarized as follows: The defendant along with Stacy, Shawnte, Andrew and Jessica (13-year-old female) were hanging out at the downtown Berkeley BART station when the victim approached and asked for a cigarette. After talking they agreed to buy some liquor and walk to Ohlone Park. They bought a six pack of Colt 45 and three bottles of Thunderbird. They then walked to Ohlone Park and began drinking the liquor. In addition, Stacy and Shawnte were flirting with the victim. The victim drank one half can of Colt 45 and one half bottle of Thunderbird. At one point the victim fell due to being intoxicated.

The group decided that they wanted a change of scenery and took the bus to Rockridge BART station. After getting off the bus, Stacy and Andrew had to hold the victim because she was too drunk to stand. The group then walked to Chabot School. Stacy and the victim then walked to a park above the school and had sex.

The defendant and Shawnte walked up to them after they stopped and the defendant asked: "Is it cool if we got a turn." The defendant indicated that the victim stated: "I'm not tripping." The defendant then got on top of the victim, but could not get an erection. The defendant then asked the victim to orally copulate him which she started; however, a car stopped at the park and she stopped.

The defendants, Stacy, Shawnte, and Jessica then left. Andrew stayed with the victim. Then next day Andrew told him that the victim stated that she had been raped. The defendant was asked why the victim would say that she was raped based upon his account of the incident and he stated: "Maybe afterwards, she felt she was taken advantage of because she was drunk."

Between the rape incident and being identified as a participant in the rape, the defendant was taken into custody on a separate incident. While in custody, the defendant reported that he was raped. The defendant was asked if there was a similarity between his rape and what happened to the victim and he stated: "She wasn't really participating like a willing participant. She was just lying there. It didn't look like she was willing to have sex."

Defendant's Statement Re Probation/Diversion: In a video interview on July 3, 2001, no statement was taken.

#### Victim Information:

Victim's Notification: On July 24, 2001 the victim's mother, Rosy Goins, was contacted via the phone. In addition, restitution recovery officer Inspector Cynthia Hall was also contacted.

FRANKLIN, DAMEON

Docket #: 136007B

Victim's Statement: Ms. Goins stated that immediately after the rape incident that her daughter was in an extreme state of depression and constantly crying. Ms. Goins checked her daughter into Walnut Creek Mental Hospital where she was treated with anti-depressant medication by Dr. Wong. The long-term consequences of the rape incident on her daughter is that she suffers from nightmares and is socially withdrawn. In addition, she easily becomes frustrated with men (including father, stepfather and brother) and questions authority in general. As a result of questioning authority, the victim has moved from her mother and stepfather's home to her father's, grandmother's and has rented rooms in two different friends' homes. The victim is currently renting a room in a third friend's home. Ms. Goins stated that the private attorney's cross examination of her daughter during the trial of the defendants reinforced her daughter's question of authority.

Ms. Goins stated that her daughter was a tenth grader at Clayton Valley High School in Concord when the rape incident occurred. Ms. Goins stated her daughter could not function in school and that she cried sporadically and could not concentrate. In the past two and a half years, her daughter has not progressed past the tenth grade. In January of 2001, the victim registered for a home school program in Berkeley.

In reference to counseling, her daughter was receiving weekly counseling for about eight months through a rape victim's program. Currently, her daughter is looking for another counselor. Ms. Goins also talked about the emotional stress she has been experiencing, but has not sought counseling.

In reference to punishment for the defendants, Ms. Goins stated: "They should be locked up forever. They should go to a place where people treat them like they treat people."

Ms. Goins further indicated that the victim's natural father, herself and daughter plan to be in Court. In addition, her daughter plans to read a statement at sentencing.

According to Inspector Cynthia Hall, expenses have been awarded by the Victim's Compensation Board under claim numbers 529536 and 529538. In addition, Inspector Hall is recommended that a "to be determined" order be imposed.

Restitution: \$960.25 restitution to Victim's Compensation Board, PO Box 1348, Sacramento, California 95812 - 1348.

Defendant's Statement of Assets Form: Attached.

Compliance with Section 296 of the Penal Code: Based upon a jury conviction of Penal Code 288, felony, the defendant is required to submit fingerprints, blood and saliva samples. According to CORPUS, the aforementioned has not been submitted as of July 31, 2001.



FRANKLIN, DAMEON

Docket #: 136007B

Time in Custody: 917 daysArrest  
2-19-99ReleaseStatus  
In CustodyTotal  
917 daysSOCIAL FACTORSNote: The defendant provided the following information unless otherwise noted.

Defendant's Living Situation: The defendant has been homeless in Berkeley since July of 1998. The defendant was receiving mail at his mother's address, 476 Creighton Way, Oakland, California. The defendant anticipates that his residency for the immediate future will be state prison.

Family Background: The defendant was born and raised in Oakland by his parents. The defendant's father, Lester Franklin, was a cooking instructor for San Francisco City College and deceased in 1987. The defendant's mother, Juanita Franklin, is a retired airline fleet clerk and she resides in Oakland. The defendant has two siblings (18 years and 20 years old). No one in the defendant's immediate family has a history of alcoholism, mental disorders or criminal convictions.

Marital History: The defendant has never been married or fathered any children.

Educational History: While in the 11<sup>th</sup> grade at Skyline High School, the defendant was expelled for fighting with a security guard. While in North County Jail, the defendant received his GED in 2001.

Employment History: Between March 1998 to June 1998, the defendant was employed as a short-order cook for the Oakland Hill Tennis Club in Oakland. The defendant earned \$7.25 per hour and worked full time. The defendant quit his job due to personal problems.

Financial Status: The defendant has no assets and lists no liabilities.

Military History: None.

Medical/Mental Health History: The defendant appears to be in satisfactory mental and physical health.

Alcohol/Drug History: The defendant is 23 years old. The defendant started drinking beer and vodka at 15 years of age. The defendant indicated that he started drinking liquor seriously at 18 years of age until his arrest at 20 years of age. The defendant was drinking four to five days per week and getting drunk two to three days weekly. The defendant indicated he had an alcohol problem.

The defendant started smoking marijuana at 15 years of age. The defendant would smoke approximately one marijuana cigarette per month. The defendant denies using any other illegal drug.



FRANKLIN, DAMEON

Docket #: 136007B

### SENTENCING FACTORS

Rule 413: Probation Eligibility When Probation is Limited:

- (b) The defendant appears to be statutorily ineligible for probation absent unusual circumstances because of the provisions of Penal Code 1203.065(a).

Rule 414: Criteria Affecting Probation:

Because the defendant is ineligible for probation, these factors will not be addressed.

Rule 421 Circumstances in Aggravation:

- (a) (1) The defendant participated in the gang rape of a 15-year-old girl.
- (a) (3) The victim was particularly vulnerable as she was only 15 years old and intoxicated at the time of the rape.
- (b) (4) The defendant was on probation when the crime was committed.

Rule 423: Circumstances in Mitigation:

None of the factors in regard to the crime or to the defendant appear applicable.

### EVALUATION

The defendant is a 22-year-old man that has been convicted by a jury of violating two counts of Penal Code 261(A)(2) Clause 264.1, felony and two counts of Penal Code 288A(D), felony. The defendant admits participating in group sex with a willing 15-year-old female, but denies being involved in a rape. The defendant was on three years probation at the time of the offense. Prior to being arrested for the offense, the defendant was placed on probation again in December of 1998 for a violation of Penal Code 211, felony.

According to the Probation Department's Adult Services Initial Classification and Program Assignment, the defendant has been classified as a maximum threat to the community.

The defendant has participated in the gang-rape of a 15-year-old girl and the effects on the victim have been devastating. With the current jury verdict, the defendant has been labeled as a predator and a threat to society. The Probation Department concurs with the District Attorney's recommendation of state prison.

### RECOMMENDATION

It is respectfully recommended that probation be denied, and that a restitution fine in the amount of \$800.00 be imposed pursuant to Section 1202.4(b) of the Penal Code.

Frank Tapia

RE: Dameon Franklin  
PFN/CEN: AYA853  
Docket No: 136007B  
Date of R&S: August 23, 2001  
Date of Conviction: June 21, 2001  
DEPT: 2

Adult Probation Dept.  
400 Broadway  
Oakland, CA 94607

The following information is provided to assist you in your investigation concerning the above-named defendant.

**OFFENSE(S) WITH WHICH CHARGED:**

Count 1: Penal Code §261(a)(2)  
Clauses: 264.1  
Count 2: Penal Code §261(a)(2)  
Clauses: 264.1  
Count 3: Penal Code §288a(d)  
Count 4: Penal Code §288a(d)  
Count 5: Penal Code §286(d)  
Count 6: Penal Code §289(a)  
Clauses: 264.1

**OFFENSE(S) OF WHICH CONVICTED:**

Count 1: Penal Code §261(a)(2)  
Clauses: 264.1  
Count 2: Penal Code §261(a)(2)  
Clauses: 264.1  
Count 3: Penal Code §288a(d)  
Count 4: Penal Code §288a(d)

**VICTIM AND/OR CHIEF WITNESS:**

Jane Doe (Corina Gallia)  
Please see case file for address.

**SUMMARY OF OFFENSE:**

On September 4, 1998 Jane Doe left work at about 5pm on her way to her mother's house in Concord. Jane walked up to a boy named Andrew and asked him if he had a light for her cigarette. Jane and Andrew began to. A few minutes later defendant Lytle and his friends walked up to Andrew and Jane. They all began to talk and defendant Lytle began flirting with Jane.

Jane agreed to go with the group including defendant Lytle, defendant Franklin and defendant Gullledge to a park and hung out there for a while playing with a puppy and talking.

**Probation Letter****Page 2**

Defendant Lytle suggested that they all get alcohol and Jane chipped in money. Defendant Lytle had someone buy Thunderbird and Colt 45. The group went to another park, and they hung out there. At some point at that park Jane kissed defendant Lytle. Jane doesn't know how much she drank. A little while later she felt nauseous and dizzy. At this point it started getting dark and Jane told everyone that she needed to get home.

Everyone started to walk back to the BART station. On the way Jane got sick and threw up. Defendant Lytle and Jane and at some point Andrew went down into BART and someone noticed that Jane was not doing well and told security. Defendant Lytle told Jane that they had to leave so they wouldn't get in trouble.

The group took the bus to Oakland. Jane had no idea where they were. The group walked to Chabot School where defendant Lytle was once a student. Defendant Lytle took Jane up to a grassy area telling her they were going to Rockridge BART. Jane kept saying she wanted to go home. Defendant Lytle made a move on Jane and she pushed him away. Defendant Lytle started to hit her around the face, pushing her onto the ground and hit her in the head with the end of a screwdriver. Defendant Lytle kept hitting her in the head until she stopped fighting. Defendant Franklin and defendant Gulledge came up the hill onto the grassy area and joined in. The victim testified that she was raped by defendant Lytle, forced to orally copulate him, and sodomized by him.

Jane also testified that while she was held down, she was raped by another of the group and forced to orally copulate the third.

Defendant Franklin admitted that he tried to rape the victim but was unable to remain erect. He admitted that he forced the victim to orally copulate him.

After the attack was over Jane went screaming. She jumped in to the middle of the street, banged on car windows and ran to a stranger's house to get help.

**SIGNIFICANT CRIMINAL HISTORY:**

Penal Code §211 conviction 11-6-98

**RECOMMENDATION**

The defendant faces a maximum of 36 years in the State Prison. It is recommended that the defendant be sentenced to 18 years in State Prison at 85% time as follows:

- Count 1: Aggravated 9 years
- Count 2: Aggravated 9 years consecutive
- Count 3: Midterm 7 years concurrent
- Count 4: Midterm 7 years concurrent

**Factors in aggravation Rule 4.421:**

- (a)(1) The defendant participated in the gang rape of a 15 year old girl. The victim was held down, beaten about the head with fists and a screw driver while the three defendants assaulted her.
- (2) While the defendant did not personally use a weapon in the attack, the victim testified that she was beaten about the head with a screwdriver and threatened with a knife. The screwdriver was found stuck into the ground at the scene. Two knives were also found at the scene.
- (3) The victim was 15 years old at the time of the attack. The victim was also extremely intoxicated at the time of the attack.
- (4) Not applicable to this defendant.
- (5) Defendant Gulledge was a minor at the time of the attack. The defendant helped the minor commit this crime by holding the victim while the minor raped the victim.

Probation Letter

Page 3

(6) Not applicable to this defendant.

(7) The defendant could face a maximum of 36 years in state prison. The court, at its discretion, could sentence the defendant to fully consecutive terms on all four counts for which he was convicted.

(8) Not applicable to this defendant.

(9) Not applicable.

(10) Not applicable.

(11) Not applicable.

(b)(1) The defendant joined in the raping of a 15 year old girl. He witnessed a portion of the attack and then joined the attack instead of helping the victim.

(2) After the defendant participated in this attack, he participated in a robbery for which there was a conviction. This shows that this act was not a single act that will never happen again. Defendant Franklin shows that he has no intention of ceasing his criminal behavior.

(3) Not applicable to this defendant.

(4) Not applicable to this defendant.

(5) Not applicable.

Factors in mitigation Rule 4.423:

(a)(1) Not applicable.

(2) Not applicable.

(3) Not applicable.

(4) Not applicable.

(5) Not applicable.

(6) Not applicable.

(7) Not applicable.

(8) Not applicable.

(9) Not applicable.

(b)(1) Not applicable.

(2) Not applicable.

(3) The defendant admitted participating in some of the attack.

(4) Not applicable.

(5) Not applicable.

(6) Not applicable.

For the above stated reasons and considerations, the People ask the Court to sentence the defendant to 18 years State Prison at 85% time.

Respectfully submitted,

THOMAS J. ORLOFF  
DISTRICT ATTORNEY

By: \_\_\_\_\_

Danielle Hilton

Deputy District Attorney



FRANKLIN, DAMEON

Docket #: 136007B

If the sentence includes a period of parole, it is recommended that an additional restitution fine be imposed pursuant to Section 1202.45 of the Penal Code in the same amount, and that the fine be suspended unless parole is revoked.

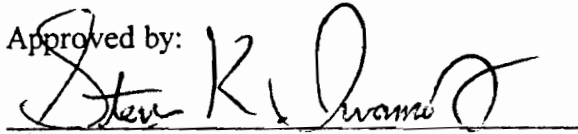
Pay \$960.25 restitution to Victim's Compensation Board. This order shall be enforceable as a Civil Judgement.

It is requested that a "to be determined" order be imposed pursuant to Penal Code Section 1203.4(f) and the Court shall maintain jurisdiction over the final restitution amount.

Date typed: 8-13-01  
bjm

Respectfully submitted,

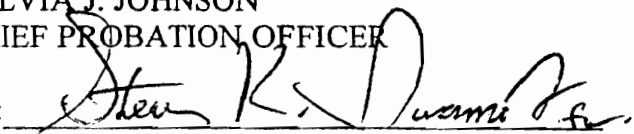
Approved by:



Steve K. Iwamoto  
Unit Supervisor

SYLVIA J. JOHNSON  
CHIEF PROBATION OFFICER

By:



Frank Tapia  
Deputy Probation Officer

I have read and considered  
the foregoing report.

JUDGE

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01/26/00



**E X H I B I T #6**

**DECLARATION OF DAMEON RAY FRANKLIN ... PETITIONER**

DECLARATION OF: DAMEON RAY FRANKLIN

I, Dameon Ray Franklin Hereby Pose And Declare The Following:

That I am the petitioner in the foregoing Petition For Writ of Habeas Corpus

That I have carefully prepared and read said habeas corpus petition and know the same to be true and correct.

That **Rodney R. Jones** was appellate counsel as appointed by the Court of Appeal, First Appellate District.

2That during the appellate process appellate counsel at no time ever consulted with me nor had any contact with me whatsoever in reference to this matter.

That appellate counsel failed to research pertinent law available for preperation and submission to the Court of Appeal in my behalf resulting in said appellate case before the Court of Appeal resulting in my case being affirmed.

That omissions by appellate counsel and appellate counsel's failures rise to the level of ineffective assistance of counsel.

Under the penalty of perjury under the laws of the State of California I swear the foregoing to be true and correct to the best of my knowledge and belief.

Dated this 28th day of September, 2007, at Delano, California

S156786

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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In re DAMEON RAY FRANKLIN on Habeas Corpus

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The petition for writ of habeas corpus is denied.

**SUPREME COURT  
FILED**

MAR 19 2008

Frederick K. Ohlrich Clerk

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Deputy

GEORGE

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Chief Justice

Kern Valley State Prison  
Facility C, Building 7